

EXHIBIT 8

SUPREME COURT : ROCKLAND COUNTY
STATE OF NEW YORK

-----X
ANNE BRYANT,

Plaintiff,

-against-

Index No.:
5192/00

BROADCAST MUSIC, INC., (a/k/a "BMI"),
CLIFFORD A. "FORD" KINDER, KINDER &
CO., LTD., VADIVOX, LTD., JULES M.
"JOE" BACAL, GRIFFIN BACAL, INC.,
STARWILD MUSIC BMI, WILDSTAR MUSIC
ASCAP, SUNBOW PRODUCTIONS, INC., and
JOHN AND JANE DOES 1-10,

Defendants.

-----X
CONFERENCE

September 13, 2004
One South Main Street
New City, New York

BEFORE: HON. ANDREW P. O'ROURKE,
Justice of the Supreme Court

APPEARANCES:

For the Plaintiff:

MONAGHAN, MONAGHAN, LAMBS & MARCHISCO, ESQS.
23 West Grand Avenue
Montvale, New Jersey 07645
BY: PATRICK J. MONAGHAN, ESQ.

For the Defendant Sunbow:

PATTERSON, BELKNAP, WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036-6710
BY: GLORIA C. PHARES, ESQ.
and
BY: LAUREN HAMMER BRESLOW, ESQ.

**Ellen P. Maguire, RMR,
Senior Court Reporter**

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2 THE COURT: I just this have one housekeeping
3 question. Is BMI in this case?

4 MS. PHARES: It is still in this case.

5 MR. MONAGHAN: It is.

6 MS. PHARES: I have spoken to Ms. Saffer. She
7 said that she had actually thought that BMI would have
8 settled by now. She had sent a marked-up copy of a
9 settlement agreement to Mr. Monaghan and has not heard
10 from him. She does want the Court to know that,
11 however, that their case has not been settled as yet,
12 and she is out of town. Although she thought she would
13 have, as I said, her case would have been settled by
14 now. She's in Utah.

15 MR. MONAGHAN: We are -- there was a settlement
16 in principle. It is the details of working out how to
17 correct some of the BMI registrations. It is the
18 details of that, that have been taking sometime to try
19 and work out.

20 THE COURT: But there is no problem with either
21 of the sides that are here and going on without BMI.

22 MS. PHARES: There is no problem.

23 THE COURT: Okay. Let the record reflect that I
24 had an opportunity to discuss this matter with counsel
25 in chambers, and that it is the understanding of this

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1 Court that some documents have been discovered that
2 were heretofore unavailable, and, at this time, Ms.
3 Phares, perhaps, you'll tell us what is going on.
4

5 MS. PHARES: All right. Your Honor, what I, as I
6 indicated in chambers, I am beginning with the premise,
7 which was that of the trial on the basis for denying
8 the defendant Sunbow summary judgment was the
9 plaintiff's contention that she had an oral working
10 arrangement with Sunbow, and it is our contention that
11 these documents, which we contend are genuine, that the
12 premise falls with the assigned work-for-hire
13 agreements, and that, frankly, Ms. Bryant's denial of
14 her various signatures is really irrelevant, because
15 Mr. Kinder, who signed for the company, has
16 acknowledged his signatures on them.

17 We note now also that Ms. Bryant has in her
18 affidavit, has changed from her old theme of "I never
19 signed agreements" to now "I would never have signed
20 away my writer's share." But for purposes of today,
21 the issue is whether or not these documents are
22 genuine, and I gather that part of the concern that
23 they may not be relays^{to} to the fact that as their
24 appearance has been described as mysterious, and I
25 would like to dispel that mystery.

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1 But as a background for this, and so you
2 understand how this works, Sunbow was sold to Sony,
3 actually to a division of Sony, Sony Wonder in 1998.
4 Then Sony again^g itself sold Sunbow at the end of the
5 year in 2000 to a German company called TV Loonland,
6 and this is important for how I finally figured out
7 where these documents might be.
8

9 Just as a background, although this case was
10 originally brought in 2000, it was not until after the
11 note of issue that Mr. Monaghan sought these
12 work-for-hire agreements. That was on June 30th of
13 last year. And it had been our contention that this
14 discovery was late, but then on an application to your
15 Honor in October, Sunbow was ordered to respond to that
16 request. So we checked the index of the documents that
17 were in Sunbow's warehouse, and we searched all those
18 files in New York. And Mr. Rigby who you will remember
19 was here during our first week of trial, who was with
20 TV Loonland, searched files in Germany.

21 In fact, he was the one who found the unsigned
22 Jem agreement in the file that I was describing in
23 chambers, which was a file that related to a request to
24 make a record of greatest hits of cartoon themes, and
25 Ms. Weitzman of Sunbow had been apparently unable to

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1 find the document, the original agreement, and
2 consulted Mr. Harris, Robert Harris, who was then with
3 Levy, Rosensweig and Hyman, asking him if he had a
4 copy. So it was in a file relating to that request
5 that we found the unsigned Jem agreement, the
6 correspondence from Mr. Dobishinski to Mr. Harris, and
7 the comparable agreement with Barry Harmon who was the
8 lyricist for Jem. And there was also a letter from Mr.
9 Harris to Ms. Weitzman explaining what he had in his
10 file, then that he was conveying it all to her. And
11 that's where that was.
12

13 All right. On November 10, we produced those
14 documents. Now, until that time, and we went over this
15 at trial with Ms. Bryant, she had testified in March of
16 that year, that there had been agreements, that she had
17 signed them, that she didn't remember, she didn't
18 remember signing them, but she knew there were
19 agreements. She discussed them with her partner and
20 she also had said there were agreements with GBI.

21 Now, however, in response to the motion for
22 summary judgment for the first time, we were told that
23 they had never had signed agreements, that they always
24 worked on an oral working arrangement.

25 All right. From the end of November through

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February of this year, we went through the period of the motion for summary judgment, and the reconsideration and the removal. When the case was remanded in February, and in anticipation also of our meeting with you at the beginning of March, I got a hold of David Rosensweig to try and find out with him where he had sent his documents, when his firm disbanded at the end of 1999. He said he sent them to Sony, which made sense, because at that time Sony owned Sunbow. So I called lawyers at Sony. Some of whom I know because they have been with our firm before, and we have a relationship with them. And I asked them, did they know where these were? And they said that, no, that Sunbow had always had a separate administration; in other words, it kept its own documents. It had its own people, and, therefore, they wouldn't have had them in their files.

If you recall, in March, you invited us to make a motion to dismiss on statute of frauds, which we did. And then that was resolved in April, and so in June and in May, before the -- I started thinking about where these documents could possibly be and who might have copies of them. I checked with the AFM, the American Federation of Music in LA, with Local 802 in New York,

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2 Talent Payment Partners, which was later called
3 Entertainment Partners, who made the residual payments
4 under those union contracts. I thought maybe they
5 might have them.

6 We reviewed the summary of the diligence that was
7 done by the outside corporate lawyers, Rosen and
8 Collins, who had handled the sale of Sunbow to Sony,
9 but it turned out that they had primarily been looking
10 at current ongoing licenses. I mean, this was years
11 after these programs had originally been broadcast.
12 There never had been claims, there was never any -- it
13 was at that point it was kind of unreasonable to go
14 back and look at the underlying agreements that had to
15 do with the creation of the programs.

16 Lauren, Ms. Breslow, my associate, went to the
17 offices of the outside counsel who handled the sale of
18 Sunbow from Sony, then to TV L, and we found nothing
19 that was relevant. We even, because we figured that
20 there were probably very few copies of these, that
21 would have been probably one for each of Ms. Bryant and
22 Mr. Kinder and one for Sunbow, and that seems to be
23 corroborated by the correspondence we have seen, which
24 it usually says there are three or four executed
25 copies. We even went to the company that we found out

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1 had acquired the assets of Mr. Kinder's, Kinder and
2 Co., after he went off to medical school, and they did
3 not have any documents.
4

5 So we went to trial in July, and we were
6 obviously preoccupied with preparing for that. Right
7 beforehand, although I was trying to find these
8 documents, and after the trial in July, I sort of
9 thought about it. I am not going to rely on any more
10 of these warehouse entities for documents. I insisted
11 all of the boxes on the Sunbow warehouses be searched
12 here and in Germany, everything. We went through all
13 those documents, and we still weren't finding them.
14 Germany said they frankly had mostly '90's documents,
15 which was, which was consistent with what they had
16 found beforehand. But we were not finding these older
17 documents, and I, then, again, got to thinking about
18 where these documents might have been, and I went back
19 to Sony. And I asked the lawyers that were there, were
20 there any other place they could be. They gave me the
21 same explanation they had given me before, but at the
22 same time they also sort of said that there is a
23 decentralized kind of filing of documents at Sony. So
24 the record company is distinct from the division that
25 does their TV work, and I asked them would they please

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2 at least send around an E-mail to all the people who
3 might have anything to do with this, to see if anybody
4 had any documents relating to Sunbow.

5 Well, I was waiting for that response. On the
6 second of August -- I sent that on the 23rd -- I sent
7 him an E-mail that could be distributed on the second
8 of August. Before I heard back from them, I even
9 suggested to TV Loonland it try to use its relationship
10 with Hasbro to obtain documents. So this is kind of
11 tricky because Hasbro is TV L's licensor, and which is
12 an adversary relationship, and they were unlikely to
13 want to go routing around in their documents.

14 But, finally, two days later on August 4, Sony
15 let us know they had found 16 boxes. So after a lot of
16 toing and frowing, we had to get the right lot numbers
17 and the right this and that. They finally permitted
18 Ms. Breslow to go to the warehouse to search the 16
19 boxes. She did not find any work-for-hire agreements
20 there, but Brian, the warehouse man, says to Ms.
21 Breslow, what about those boxes in the back that are
22 Sunbow boxes, and at the time they went back. They
23 looked at them. They were up high, on very high
24 shelves. They had not been used for a very long time.
25 Boxes that are used go in and out of the warehouse all

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1 the time were on lower shelves.

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3 So, you know, she came back, ^{and} reported this to
4 me. I reported this to Sony, and as it turned out
5 there were not 200 boxes. There were over 600 boxes.
6 So we had to go through figuring out, just the
7 procedure of getting these all to be brought down and
8 looked at. I said, all right. Look, why don't we just
9 bring them all down, and at least we can flip the tops
10 to see whether or not they have things like costumes or
11 promotional materials, things that are clearly not
12 relevant.

13 Finally, on the 18th of August, Ms. Breslow and
14 Suzanna Healan, our legal assistant, went together.
15 We were in a warehouse in Queens, in a, frankly,
16 dangerous neighborhood. It was a filthy, unbelievably
17 dirty job because these boxes had clearly not been
18 removed for years. They were taped shut, old tapes.
19 In the course of doing this, they came upon binders of
20 documents, and I want the Court to see these, because
21 this is the Jem contracts file. This is exactly the
22 way they looked. They weren't in any obvious order.
23 They were just sort of put in on top of the
24 arrangement. Later they found another one for My
25 Little Pony, and, finally, we found another for GI Joe,

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1 and this is the GI Joe one.

2 So searching in these became very easy because
3 they are filed. These are writer's contracts and the
4 composer's contracts, and there is an entry for Kinder
5 and Bryant, and that's how we found those documents.
6 They also figured there were about 65 ^{boxes} documents that
7 were too hard to figure out what was in them from just
8 standing in the warehouse, so those 65 boxes were
9 brought back to our office. They reviewed them for
10 more information, but we did not find any more binders.
11 That was on the 18th. We produced the documents to
12 plaintiff and the Court on the 19th, and if you recall,
13 we had our conference on the 20th.

14 I will say that I am still not, frankly, myself
15 satisfied that we have found all the possible
16 documents. In addition, to not finding other binders,
17 we still haven't found the Levy Rosensweig documents,
18 which would have presumably the correspondence and
19 negotiations related to not only Kinder and Bryant,
20 but, obviously, other creative people who participated
21 in these television programs. But there is nothing in
22 the least bit. We were not withholding these
23 documents. I tried to find them since the, since the
24 very beginning of when this finally became an issue in
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1 this case, which it was not until last November. And
2 as I say, we have the original documents here, and we
3 have color copies of the others.
4

5 Now, the next thing that I would like to do is we
6 have prepared notebooks, which I'd like to provide to
7 you and to Mr. Monaghan, and just so you can look at the
8 documents that have been acknowledged, just to see,
9 just put them together in a way that will make sense of
10 them. Whether you want to examine them today or not,
11 obviously, is your decision. But at least so you know
12 how that has been organized so it makes it easier to do
13 it rather than having to go through the affidavits,
14 and, well, and they don't have all the acknowledged
15 signatures in any event.

16 THE COURT: Just so that I understand these
17 folders that you are giving out contain copies of those
18 contracts that you found that bear, what did you say?
19 Are the signatures Kinder and Bryant or one of the
20 other on them?

21 MS. PHARES: Right. If you look at them, inside
22 the front folder we have put the affidavits of Mr.
23 Kinder and Ms. Bryant. In the back, there is a back
24 sleeve at the very back of the book, are color
25 photocopies of the original documents.

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The color copies are of the Jem and the My Little --

Well, actually, I was just told there is actually color photocopying. In any event, the originals are here in the books, but that the color photocopies were just some of the additional materials that had been provided to us, but we will certainly make those available for reference.

But I'll tell you what, if you would like right now, could you just look at the Jem, the Jem agreement. Here is the red book. I think it is the red one anyway, right, and there should be a, should be a tab for Kinder and Bryant.

THE COURT: Would it be in the writer's contract?

MS. PHARES: No. If I may, your Honor.

It might actually say their names, or it would say.

MS. BRESLOW: I believe it is the last tab.

MS. PHARES: It is in the very back. It is not sticking out, of course, just to make life easier.

Now, the document that's at the front, your Honor, the very first document is the two-page document. That's an amendment. And, in fact, it is the amendment that was the subject of that

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2 correspondence of Mr. Dobishinski that we were
3 examining at trial. This is the signed amendment,
4 signed by Mr. Kinder. Behind it is the agreement
5 itself. The agreement has sort of three parts. There
6 is the main agreement, signed by Mr. Kinder and Carole
7 Weitzman from Sunbow. Then there is a Schedule A,
8 which is a representation by the two writers that they
9 worked for hire for Kinder and Bryant, and then there
10 is something called an inducement letter. An
11 inducement letter is customary in these kinds of
12 agreements, because since it is known that the writers
13 themselves are going to be doing the work, they
14 essentially reiterate the representations and
15 warranties that are in the main agreement, and the
16 representation that the work is for hire.

17 THE COURT: Okay. Your position is that when
18 work is for hire, that unless it is specifically spelt
19 out in the agreement, that the writer gets only that
20 amount of money that is promised in the agreement for
21 doing that particular operation.

22 MS. PHARES: That's correct, your Honor.

23 THE COURT: That, therefore, that ends when the
24 song is produced or whatever it is that they do.

25 MS. PHARES: Not necessarily. Sometimes an

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1 agreement will provide for ongoing royalties.

2 THE COURT: Unless it provides in the agreement a
3 work-for-hire agreement, unless somebody is in there
4 and it ends at the point that the job is done.
5

6 MS. PHARES: That's correct.

7 That was that agreement that they found, and then
8 there is a similar one in the My Little Pony and
9 Friends.

10 Now, I recognize that My Little Pony and Friends
11 is not one of the compositions or rather the TV series,
12 if that is an issue here, but I think it is extremely
13 probative to our contention that it was the practice to
14 do this, and, certainly, to the contention of the
15 plaintiff that she, that she worked, according to an
16 oral working arrangement, that, in fact, there were
17 agreements that did this. We did not find an agreement
18 for GI Joe, which is consistent with the plaintiff's
19 claim that they did not do the music for it.

20 THE COURT: GI Joe. My recollection was Ms.
21 Bryant's position was that she had gotten the rights
22 from somebody else. Is that not correct?

23 MS. PHARES: My understanding is she said she did
24 not do the music for GI Joe. I think she said Mr.
25 Kinder had some role in its creation, but she did not.

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1 THE COURT: At certain points, he gave her
2 rights to.
3

4 MS. PHARES: She has said that, yes.

5 THE PLAINTIFF: I did the music for GI Joe theme
6 product we are talking about here. I think I did that
7 with Ford. Ford and I did that, and Barry Harmon
8 contributed new lyrics to it. That's different than
9 the original GI Joe song.

10 MS. PHARES: Also, not an issue in this case.

11 THE PLAINTIFF: GI Joe theme, why is that?

12 MS. PHARES: Because it wasn't alleged in the
13 complaint.

14 THE COURT: So, now, that is the way that this
15 document, these documents came. That's the way this
16 document came to light. Ms. Breslow, at risk of life
17 and limb, went through these boxes at some obscure
18 place in Queens. That sounds like where Imus has his
19 radio program.

20 Mr. Monaghan, is there any comment you want to
21 make about -- you talked before in chambers whether or
22 not you wanted to take the deposition of the person who
23 found it. What's your position on that?

24 MR. MONAGHAN: I don't think I need to take Ms.
25 Breslow's deposition. I'll accept the representations

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2 thus far. But I would want to know, I would want to
3 see all of the documents, not just those that were
4 selected for presentation to the Court.

5 THE COURT: These are here I assume.

6 MR. MONAGHAN: I understand there were a bunch of
7 boxes. I mean, something like hundreds of boxes, not
8 that I am anxious to do this. Believe me.

9 MS. PHARES: These documents were not called for.
10 what are at issue are the documents that you asked for
11 on the -- and at the moment, also, dealing with
12 liability.

13 MR. MONAGHAN: Can I just finish.

14 I would think, your Honor, that we would be
15 entitled to know -- the judgment call about what was
16 relevant has been made unilaterally here. Judgment
17 call about what documents, out of these hundreds of
18 boxes, was a judgment call made by Ms. Phares, perhaps,
19 Ms. Breslow and perhaps others. I am entitled to see
20 there may be other documents that have a direct bearing
21 that may be applicable. Who knows, we don't know.

22 So I think we should have an opportunity, if the
23 Court is going to, you know, consider these documents,
24 which, obviously, I think you probably are, we have to
25 see everything. We have to be able to.

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1 THE COURT: Hold on.

2 My understanding of it was that, Mr. Monaghan,
3 you and your client took a position that these
4 documents were never signed, and that there was an oral
5 agreement that covered all of this. Now, we have,
6 apparently, copies, and I just looked at them, of,
7 signed in ink and the ink is different. You know, it
8 looks pretty much as though that the people signed it.
9 I am not a person that will make that lightly. I have
10 to look at a lot of signatures before I decide. Even
11 then I might want to hear some evidence from somebody
12 on it.

13 But I don't know that you are entitled to any
14 other discovery.

15 MR. MONAGHAN: Well, your Honor, if I may, there
16 is nothing inconsistent even with what you have been
17 presented with, what we have said all along, and Ms.
18 Bryant just said this in her affidavit, what she has
19 said. She's never said, "I didn't sign certain
20 documents." She is saying in her affidavit she's not
21 changing anything she said. What she said is I keep my
22 writer's royalties. That's what she says.

23 Now, the ultimate issue of whether one or more of
24 these documents relinquishes those writer royalties is
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2 entirely a separate issue. You can make the call on
3 that provided it is a genuine document, provided it is
4 done at the time it is supposed to be done.

5 For example, for example, the Jem themes were
6 composed earlier than these documents would indicate.
7 They were composed months before it. You cannot have a
8 proper work for hire ex post facto. The author must
9 compose it as work for hire at the time. You don't go
10 back and reconstruct it later on.

11 Secondly, the Jem agreement is one agreement we
12 have to deal with. It doesn't provide an answer to all
13 the questions about all the other compositions.

14 THE COURT: It is your position there were oral
15 agreements on some and written agreements on others.

16 MR. MONAGHAN: Our position is the oral
17 understanding, which is the understanding they had at
18 Michelin (phonetic) and Company, which is what my
19 client testified to, consistently, and you will see
20 Michelin's name for some reason comes in. Is that
21 writers keep their royalties. And that's the oral
22 argument. That's the oral arrangements. Writers keep
23 their royalties and that's the industry standard as
24 well.

25 What Ms. Phares wants you to do is to render a

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2 decision that would be contradictory to industry
3 standards because they have presented you with
4 work-for-hire agreements in some case and not in
5 others. That work for hire is not mutually exclusive
6 with writers keeping their royalties.

7 THE COURT: In the work-for-hire agreement, there
8 is a provision.

9 MR. MONAGHAN: Or it is ignored. It is not, it
10 is not covered, because, for example, there are uses
11 being made of music today in 2004, that were never
12 contemplated by any agreements previously. And there
13 are cases holding, for example, ring tones, who would
14 have thought in 1985, that someone's music would
15 somehow find its way into a phone and would not
16 compensation be required under those circumstances. It
17 is not as simple as it would seem. It is not as simple
18 as counsel has made it appear.

19 THE COURT: I would say this case has not been
20 simple.

21 MR. MONAGHAN: It hasn't been simple.

22 THE COURT: Don't worry about it. I think it is
23 a very complex case.

24 MR. MONAGHAN: But I am not asking for anything
25 remarkable here. We have been given 2000 pages even

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2 before this, that your Honor --

3 THE COURT: Discovery is over here. I'll tell
4 you the --

5 MR. MONAGHAN: They just discovered them.

6 THE COURT: Well, that's true. But these were
7 documents that were asked for, as I understand it.

8 MR. MONAGHAN: But how do we know that, that they
9 are giving us documents responsive to the request when
10 they make a unilateral production of documents.

11 THE COURT: There was the document you requested.

12 MS. PHARES: That was asked for.

13 THE COURT: There also was a document that at one
14 point we had marked in as the unsigned agreement as I
15 recall. It is an exhibit in this case.

16 MR. MONAGHAN: An unsigned agreement that in
17 1994, appeared someone who was involved still thought
18 was unsigned.

19 THE COURT: Well, I remember that testimony.

20 MR. MONAGHAN: You have got two other agreements
21 that were used, too, by Ms. Phares, Defendant's B and C
22 that are -- the Court has a sworn declaration -- are
23 forged. You have Ms. Bryant saying a number of these
24 documents are forged. You have slip-ins. You can
25 have, you know if you have a form in the computer and

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2 page 1 is a fill-in. Let's talk about this agreement
3 with Michelin and Company, Page 2, 3 and 4 and 5 would
4 be virtually identical regardless of what agreement.
5 It is not a difficult task to slip them in.

6 I am, by the way, I am not accusing lawyers of
7 doing anything here, other than dropping stuff on us on
8 the 11th hour, but someone else could have done this.
9 Someone could be playing --

10 That's what we want to find out about.

11 THE COURT: Yes.

12 MS. PHARES: GBI agreements that Mr. Monaghan is
13 referring to, first of all, GBI agreements are not in
14 this case. We had brought them in when we were trying
15 to defeat this argument. There had never been
16 agreements because we know that, that was not the way
17 it was handled, and Mr. Kinder has, in fact,
18 acknowledged his signature on the 1984 GBI agreement,
19 which was one that we found in the -- but it wasn't an
20 original copy. It was not an original one. But he has
21 acknowledged it was his signature. But that is really
22 beside the point because GBI is not in this case, and
23 we have now two of the Sunbow agreements that are
24 original agreements. Mr. Kinder has acknowledged they
25 are his agreements. He has acknowledged his signatures

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1 on the schedules, on the inducement letters, of all of
2 them.
3

4 And the issue in this case that brought us to
5 trial was the plaintiff's testimony that she had worked
6 with an oral working arrangement. She denied there
7 were these agreements. That was the basis on which
8 your Honor denied Sunbow's motion for summary judgment.
9 We wouldn't have gone to trial, but for that. She
10 raised an issue of fact and claimed there was an oral
11 working arrangement. That has been shown now to be
12 false, if the Court accepts the documents as genuine as
13 we believe it should.

14 THE COURT: Let me hear Mr. Monaghan on whether
15 we should have a framed issue hearing in this matter,
16 and if so, on what.

17 MR. MONAGHAN: I think we have to have a framed
18 issue hearing on the validity of these documents. Are
19 they genuine? Are they genuine documents? And we are
20 going to need -- you have Mr. Kinder's. The question
21 is, is that signature -- I did just hear them say they
22 don't have the original, which agreement are we talking
23 about? The one you just said.

24 MS. PHARES: GBI, one, that's not in case.

25 MR. MONAGHAN: GBI is in this case. This is not

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2 correct.

3 THE COURT: Why is it?

4 MR. MONAGHAN: Because the Transformers is not a
5 Sunbow production. Anything to do with Transformers is
6 not Sunbow.

7 THE PLAINTIFF: Originated.

8 THE COURT: So.

9 MR. MONAGHAN: If, unless there is an agreement
10 that is validly signed that gives up Ms. Bryant's
11 rights with respect to the music that she composed for
12 Transformers and --

13 THE COURT: You just said that Sunbow didn't own
14 Transformers or it isn't theirs.

15 MR. MONAGHAN: It was done for -- originally
16 done. What happened -- okay. As your Honor may
17 recall, the music composed by Ms. Bryant was composed
18 either for Sunbow or for GBI.

19 You have the same parties involved. Joe Bacal
20 and Griffin.

21 MS. PHARES: GBI is not a defendant in this case
22 and never has been a defendant in this case.

23 MR. MONAGHAN: Sunbow then, as we have alleged,
24 used that music composed by Ms. Bryant in Transformers.
25 We had the video here. Those were Sunbow Productions.

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1 Right on the labels it said Sunbow. Her music in
2 Sunbow Productions. Music originally commissioned by
3 GBI for which she does not get compensated by the same
4 publishers.
5

6 THE PLAINTIFF: Commonly owned.

7 MR. MONAGHAN: So it is in the case, and it has
8 been in the case.

9 So, I mean, as far as the framed issue, if the
10 documents are to be given any effect, we have to find
11 out if they are legit.

12 THE COURT: They are here. You can look at them.
13 I am not going to let you have physical possession of
14 them other than destroy them in the process.

15 MR. MONAGHAN: Your Honor.

16 THE COURT: I don't mean, don't take that
17 incorrectly. I mean, carbon date them or something so
18 we don't have them any more. This isn't the Shroud of
19 Turin, I understand. We have to have some kind of
20 control over these documents.

21 MR. MONAGHAN: All I want is the, well, initially
22 I want the -- are the documents that were discovered in
23 the warehouse indexed anywhere?

24 MS. PHARES: No.

25 MR. MONAGHAN: Was a judgment made about which of

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27

1
2 the documents -- are those binders we are looking at
3 exactly as they were?

4 MS. PHARES: Exactly.

5 MR. MONAGHAN: And there are originally signed
6 documents in those binders.

7 MS. PHARES: There are.

8 MR. MONAGHAN: Is what you are saying? Have I
9 got a binder here that has every single document that's
10 in those --

11 MS. PHARES: No. What you have, and by the way,
12 we should really make clear the binder that I have
13 given you, the one with the affidavits in the front of
14 them, that I think is to your left, what that is, just
15 let me quickly tell you how we set that up so you know.
16 What you have got is at the front of it is a summary of
17 what the parties have stated about what they have
18 signed on the first page. Then there is a -- you will
19 see a tab that says "flag key". And so after the
20 summary of the documents, there is a flag key that
21 indicates what there are.

22 The purple tabs are all the signatures that Ms.
23 Bryant has acknowledged as her own, and then we have
24 put behind it the agreements. The Jem agreements,
25 copies of the Jem agreements, a copy of the Jem

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1
2 modification, a copy of My Little Pony and Friends, and
3 there are tabs on each of them. The blue ones are Mr.
4 Kinder's, and there is an okay written on them, which
5 corresponds to our key, and the okay means that he has
6 conceded his signature. There is a "U" because he says
7 he's unsure. The orange tabs are Ms. Bryant's
8 signatures, and we put in an "F" where she claims they
9 are a forgery or an alleged forgery. And then these go
10 back through the agreements through the GBI
11 Transformers agreement in '84, two in '88.

12 There was a screen actors agreement because Ms.
13 Breslow and Ms. Healan pulled out anything they found
14 with their signatures. And there is one for Mr.
15 Kinder, there is another for Ms. Bryant, and then with
16 them are some W4 statements.

17 And just to make it clear, in the original
18 binders, what's in them, which is not really relevant
19 to this case, but it shows the nature of the agreements
20 that were signed here are just writers' agreements.
21 There are agreements with animators, I believe with
22 composers, lyricists and so forth.

23 THE COURT: I believe that a framed issue hearing
24 is necessary. The documents that have been produced,
25 the binders, the whole binders will be made available

Proceedings

29

1 to Mr. Monaghan or any expert that he has to look at --

2 MS. PHARES: I would prefer to make them
3 available to the expert directly, if you would, your
4 Honor.
5

6 THE COURT: Certainly, counsel can be present
7 with the expert.

8 MS. PHARES: Yes, absolutely.

9 MR. MONAGHAN: Does that mean you don't trust me.

10 THE COURT: I will tell you that I will look at,
11 in the meantime, a comparison of signatures, and I will
12 give you a decision on whether or not I find them
13 comparable. So you'll have that before you do the
14 framed issue. I am not going to take that right now
15 just on the basis of looking at these documents.

16 To me, the issue still stands whether there is a
17 case. If I find these documents are accurate and even
18 after a framed issue hearing, I am not going to take
19 that up today, because I am going to let you develop
20 the arguments. But my recollection is that all
21 throughout this case the assumption has been from Ms.
22 Bryant's testimony that she never gave away her rights,
23 and that she never signed any agreements.

24 THE PLAINTIFF: That gave away my rights.

25 THE COURT: That gave away.

Proceedings

30

1 THE PLAINTIFF: Right. That's right.

2
3 THE COURT: Whether or not that changes anything,
4 I can tell you I am not ready to make that decision
5 today. You may say when, and I will tell you that as
6 far as I know, I have five, four more years on the
7 bench. So this case, like the Trojan war, will end
8 somewhere down the road.

9 MS. PHARES: Your Honor, one more thing is that
10 we served a trial subpoena on Ms. Bryant for signatures
11 from 1984. All the signatures that she has in her
12 possession on business documents, 1984, '85 and '86,
13 because according to the handwriting expert that we
14 have consulted, the best practice would require our
15 seeing the signatures from that period, and we would
16 rather not rely on the signatures that she has
17 selected. We would like to see all of the ones that
18 she has.

19 MR. MONAGHAN: Let me just address that. This
20 subpoena was faxed to me at 5:36 Friday night. The
21 subpoena that was served, was not served on Ms. Bryant
22 personally.

23 MS. PHARES: It was served substitute service on
24 Marlene Phelan when who was at her home and described
25 herself as a coworker.

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2 MR. MONAGHAN: That's not good service. We are
3 not going to give them a hard time about that. But we
4 are going to need some time to -- we have no problem
5 with -- she is going to try and gather what she can.
6 She's been working on it already, and I would say maybe
7 within a week.

8 THE PLAINTIFF: I found a mortgage in '85. I
9 paid it off.

10 MS. PHARES: That's 1989.

11 THE PLAINTIFF: '85.

12 MS. PHARES: You have an '85 one.

13 MR. MONAGHAN: Ladies, so we'll try and comply as
14 best as we can with the subpoena. I am still troubled
15 by your Honor circumscribing what I can look at. This
16 isn't --

17 THE COURT: Look at anything in these books.
18 Counsel, if I gave you six hundred boxes to look
19 through, I wouldn't see you back here until next year
20 sometime, and I am not going to do that. This case has
21 got to continue to go forward.

22 MR. MONAGHAN: Will you at least leave the issue
23 open in case there is an inquiry prompted by something
24 I see in the binders.

25 MS. PHARES: Your Honor, we can represent, and

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1
2 Ms. Breslow has just said to me, we pulled everything
3 we found with her name and signature on it and Mr.
4 Kinder's. Everything.

5 THE COURT: You know, the problem is that this
6 case is in the middle of a trial now. If you had
7 wanted all of the Sunbow records or something that you
8 could have asked for it very early on. I don't know
9 that you did.

10 MR. MONAGHAN: I did.

11 MS. PHARES: He could have.

12 THE COURT: Did you ask for the ones relative to
13 these particular items?

14 MR. MONAGHAN: Your Honor, we asked for any
15 document in which Ms. Bryant purportedly signed away
16 her rights. Okay. Number one.

17 MS. PHARES: These are not in Sunbow's custody,
18 and we have provided every single document that we had.

19 THE COURT: Just a minute.

20 MR. MONAGHAN: I don't want to get in trouble
21 here.

22 THE COURT: We are not going to have any more
23 discovery. You can have these three binders looked at
24 by yourself and an expert at the offices of the
25 Patterson firm.

Proceedings

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1
2 MR. MONAGHAN: Can we take a quick scan now while
3 we are here.

4 THE COURT: He certainly can do that.

5 MR. MONAGHAN: Judge, how could I get in trouble
6 when I receive documents in the middle of a trial. Why
7 get mad at me?

8 THE COURT: I am not mad at anybody. With due
9 deference to the rights of all parties here, I am
10 trying to keep this in a manageable order.

11 MR. MONAGHAN: It has been a tough case.

12 THE COURT: I don't want to do a Judge Ito on
13 this. I want to keep control of it. That's all.

14 MR. MONAGHAN: Judge, I am going before Judge
15 Ito's partner in crime, if you will, next week. Next
16 Tuesday in LA.

17 THE COURT: What I am going to do is, I am going
18 to let the court reporter leave. But, first, I want to
19 tell you again, I'll reiterate, I am going to give you
20 an order, a decision on my view of the handwriting
21 here. I am also going to set up a framed issue hearing
22 in which both sides may introduce, if they feel that it
23 is proper, experts on handwriting. And after that I am
24 going to see what I think is left in this case. All
25 right.

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Is there any question now about what we are going to do next?

MS. PHARES: None, your Honor.

THE COURT: And explain it to me, if would you.

All right. So I am going to give you a half hour to look over these until 1:00. The court officer will stay here, but the court stenographer is not to stay, but you will get a copy of this record. The Patterson firm will pay for it, and you'll pay the Patterson firm.

MR. MONAGHAN: Thanks, Judge

O O O

(Proceedings adjourned.)

CERTIFICATION

Certified to be a true and accurate record of the within proceedings.


Ellen P. Maguire, RMR
Senior Court Reporter

EXHIBIT 9

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF ROCKLAND

3 - - - - - x
4 ANNE BRYANT,

5 Plaintiff,

6 # 5192/00

7 -against-

8 SUNBOW PRODUCTIONS, INC.,

9 Defendants.

10 - - - - - x
11 FRAMED ISSUE HEARING

12 Rockland County Courthouse
13 Main Street
14 New City, New York 10956
15 October 29, 2004

16 B e f o r e :

17 HONORABLE ANDREW P. O'ROURKE,
18 Supreme Court Justice

19 Appearances:

20 For the Plaintiff(s):

21 MONAGHAN, MONAGHAN & MARCHISIO, ESQS.
22 150 West 55th Street
23 New York, New York 10019
24 BY: PATRICK J. MONAGHAN, ESQ.

25 For the Defendant(s):

PATTERSON, BELKAMP, WEBB & TYLER, ESQS.
1133 Avenue of the Americas
New York, New York 10036-6710
BY: GLORIA C. PHARES, ESQ.

and
LAUREN HAMMER BRESLOW, ESQ.
of Counsel.

Robin DiMichele, RPR
Senior Court Reporter

Page 2

1 - R. Harris/Direct -
 2 THE COURT: Okay. All right. This is
 3 a continuation of the Bryant v Sunbow
 4 Productions matter, and we are having a
 5 framed issue hearing today on the question
 6 of the validity and authenticity of various
 7 signatures that were attached purportedly to
 8 contracts and documents that have been
 9 offered by the defendant Sunbow, and are we
 10 ready to proceed?
 11 MS. PHARES: Sunbow, yes, your Honor.
 12 MR. MONAGHAN: We are.
 13 THE COURT: Call your first witness.
 14 MS. PHARES: Sunbow then calls Mr.
 15 Robert Harris.
 16 ROBERT HARRIS,
 17 having affirmed was examined
 18 and testified as follows:
 19 COURT OFFICER: Please be seated.
 20 State your name, spell your first and last
 21 name and give your business address for the
 22 record.
 23 THE WITNESS: Robert Harris,
 24 R-o-b-e-r-t, H-a-r-r-i-s. Business address
 25 is 561 Seventh Avenue, 11th floor, New York,

Page 3

1 - R. Harris/Direct -
 2 New York, 10018.
 3 THE COURT: Go ahead, counselor.
 4 DIRECT EXAMINATION BY MS. PHARES:
 5 Q Mr. Harris, what's your profession?
 6 A I'm an attorney.
 7 Q In what area do you practice?
 8 A Entertainment law and intellectual
 9 property.
 10 Q Have you handled agreements related to
 11 TV productions?
 12 A I have.
 13 Q For how long?
 14 A Well, since I've begun practice about
 15 26 years.
 16 Q Did you ever represent Sunbow
 17 Productions, Inc.?
 18 A I did.
 19 Q During what period of time did you
 20 represent Sunbow?
 21 A From approximately, I'd say, 1982 until
 22 1998, give or take.
 23 Q And was it Sunbow's practice to enter
 24 into work made for hire agreements with
 25 contributors to its productions?

Page 4

1 - R. Harris/Direct -
 2 A Yes, it was.
 3 Q Why, if you know, did Sunbow have
 4 creative contributors sign work for hire
 5 agreements?
 6 A Well, television and film productions
 7 are collaborative efforts, and in order to obtain
 8 ownership of the various contributions and hence
 9 the entire production, it was necessary either to
 10 acquire them by work for hire or assignment, and
 11 the industry practice is a practice I believe
 12 familiar with, is we would use work for hire
 13 agreements and inquest ownership and copyright
 14 ownership in the production company.
 15 Q To your knowledge did Sunbow ever work
 16 with writers, lyricists or composers according to
 17 oral agreements?
 18 A Not to my knowledge.
 19 Q Did you prepare work for hire
 20 agreements for productions involving "Hasbro" Toys
 21 like the "Transformers", "Jem", "My Little Pony",
 22 "My Little Pony and Friends", "G.I. Joe",
 23 "Visionaries", "Charmkins" and "Glow Friends"?
 24 A Yes I did.
 25 MS. PHARES: I'm offering for

Page 5

1 - R. Harris/Direct -
 2 identification Defendant's Exhibit K, which
 3 is the binder relating to the "Jem"
 4 contracts, this is the, a copy of the binder
 5 that we looked at on September 13th, and
 6 Defendant's Exhibit L which is a copy of the
 7 binder for "My Little Pony and Friends".
 8 (Items further described herein were marked
 9 as Defendant's Exhibits K and L for
 10 identification, as of this date.)
 11 Q Mr. Harris, we're handing you notebooks
 12 of contracts relating to the productions for "Jem"
 13 and "My Little Pony and Friends". Have you had an
 14 opportunity to look through these before?
 15 A Yes I have.
 16 Q And do these notebooks contain
 17 agreements and correspondence that you prepared for
 18 Sunbow?
 19 A Yes they do.
 20 Q Even if you did not handle the negot--
 21 or the negotiations for every contract, do you
 22 recognize these as examples of work made for hire
 23 agreements that Sunbow used for writers, composers
 24 and other creative people who worked on the Sunbow
 25 TV series?

Page 6

- R. Harris/Direct -

MR. MONAGHAN: I'll object to this unless this witness is able to say he did all the work for Sunbow, they never hired any other lawyers. He's an outside attorney. I don't know how he can testify as to Sunbow's practices beyond what he knows personally.

THE COURT: I assume that's the question. Whether he knows.

MR. MONAGHAN: I understand, your Honor, there's no evidence by any Sunbow witness yet as to whether or not Mr. Harris did all of the work for Sunbow or some of the work or most of the work.

THE COURT: Overruled. I'll let him answer that question if he can.

Q Do you remember it?

A I'm not sure of the question.

THE COURT: We'll have it read back.

(Question Read.)

A Yes, I do recognize them as work for hire agreements that were used.

Q When these agreements were executed did you see the creators sign their agreements?

A No I did not.

Page 7

- R. Harris/Direct -

MR. MONAGHAN: Can we have it specific as to which agreements we're talking about?

THE COURT: He said he didn't see them sign them.

MR. MONAGHAN: I know, but prior to that, we have a series of questions about these agreements contained in binders. I don't know which agreements we're talking about, how many agreements are in each binder, whether we're talking about "Jem" or some other jingle. We just don't know at this point.

MS. PHARES: We're talking about, these were binders provided to you on September 13th.

MR. MONAGHAN: I understand that.

MS. PHARES: We're talking about the contracts in the binders.

MR. MONAGHAN: Can he please address those contracts?

Q Mr. Harris, would you look in the binder for "Jem", for example, if you would, and if you would tell me, or leafing through them, they are arranged by contributor to the movie, and the

Page 8

- R. Harris/Direct -

very last ones are the ones for Kinder and Bryant. If you want to just name the people who are involved and whether or not they appear to be the standard work made for hire writer's license or composer license so that Mr. Monaghan understands where we are, that would be helpful.

A They appear to me to be the standard agreements that we use, yes, work for hire agreements.

MR. MONAGHAN: Well, we have Sunbow numbers on these documents. Perhaps they can be identified by the Sunbow numbers then we know what we're talking about.

MR. PHARES: You want him to go through each document?

MR. MONAGHAN: No, no, just the contract.

MS. PHARES: That's what we're talking about. These are all contracts.

THE COURT: Let's keep this thing in some kind of perspective here. My understanding of K and L is that this contains all of the contracts that are in the possession of Sunbow that deal with the "Jem"

Page 9

- R. Harris/Direct -

contracts; is that correct?

MS. PHARES: That's correct.

THE COURT: And the same goes for L which is "My Little Pony", "My Little Pony and Friends", all of the contracts in the possession of Sunbow that deal with that particular piece of --

Q It has to do with all of the music that is encompassed in the entire TV series. For example, if we look at the contract behind the name Barry Harmon, the lyricist for "Jem", is that a form work for hire agreement that you recognize, Mr. Harris?

A Yes it is.

Q Do you recognize any of the writing on the contract?

A Well, believe it or not I think the date of the contract is my handwriting.

Q And do you recognize the signature on the contract?

A The signature of Thomas Griffin on behalf of Sunbow Productions, Inc. On Page 11.

Q And for example, the following writers agreements with Jina Bacarr, is that a form

Page 10

1 - R. Harris/Direct -
 2 writer's agreement?
 3 A Yes, it is a form writer's agreement.
 4 Q And well, we're going to do this in any
 5 case. Are the composer agreements in this notebook
 6 essentially the same form agreements?
 7 A Yes, essentially they are.
 8 Q Is there some way in which they might
 9 differ?
 10 A It's possible on some negotiations
 11 there may have been some slight changes in wording
 12 here or there, but the overall thrust and structure
 13 of the agreements, the best of my recollection and
 14 the ones I was involved with, remained virtually
 15 and essentially the same.
 16 Q As far as you know did Sunbow ever
 17 contract with creative people without your
 18 involvement?
 19 A Well, you say without my involvement,
 20 without my firm's involvement since we were counsel
 21 to Sunbow I do not believe so. I'm not aware of
 22 that.
 23 Q And if you would just look through the
 24 notebook for "My Little Pony and Friends", would
 25 you just confirm your testimony with respect to the

Page 11

1 - R. Harris/Direct -
 2 fact that these are the same form work made for
 3 hire agreements that your firm handled?
 4 A Yes, they are.
 5 MS. PHARES: Your Honor, I offer
 6 Defendant's K and L in evidence.
 7 THE COURT: Mr. Monaghan?
 8 MR. MONAGHAN: Well, I'm sure you're
 9 going to take them for what they're worth
 10 anyway, so with the caveat that he hasn't
 11 identified each particular document within
 12 those binders, which I don't think the
 13 witness can, and only as to the agreements
 14 he's talked about specifically, I have no
 15 objection as to those particular documents
 16 being so identified.
 17 THE COURT: I'm going to accept both K
 18 and L into evidence.
 19 MR. MONAGHAN: I just want to point
 20 out, your Honor, my client did not do "My
 21 Little Pony and Friends" show for Sunbow.
 22 They wrote no music. It's not at issue and
 23 the witness has just identified a binder that
 24 has nothing to do with the case right now.
 25 This isn't about "My Little Pony and Friends"

Page 12

1 - R. Harris/Direct -
 2 TV production for Sunbow. We don't claim
 3 anything with respect to the music for that
 4 show. There's a "My Little Pony" theme, the
 5 toy jingle, that's a different animal.
 6 MS. BRYANT: "My Little Pony and
 7 Friends" theme.
 8 MS. PHARES: The issue is whether or
 9 not --
 10 THE COURT: We all can't talk at once.
 11 So your point is that you say that this is
 12 not relevant.
 13 MR. MONAGHAN: Not the TV production
 14 agreement with Sunbow that's just been marked
 15 as Exhibit L. Exhibit K that's for the song,
 16 your Honor.
 17 THE COURT: So that's your position. I
 18 got it. Go ahead.
 19 Q Mr. Harris, when these agreements were
 20 executed did you see the signatories sign the
 21 agreements with your own eyes?
 22 A No I did not.
 23 Q What was the procedure for obtaining
 24 signatures from the writers, the composers and
 25 lyricist who signed work for hire agreements?

Page 13

1 - R. Harris/Direct -
 2 A Generally I would send out the
 3 contracts for execution when I was involved, unless
 4 I were told, may have been a case where the writers
 5 was at Sunbow and they would arrange to get the
 6 signatures directly otherwise I would generally
 7 send them out by mail.
 8 Q And then they were returned to you?
 9 A Yes.
 10 Q And then what did you do with them?
 11 A Then I would send them to Sunbow for
 12 countersignature.
 13 Q During the time that you represented
 14 Sunbow did you ever prepare agreements between
 15 Sunbow and Kinder and Bryant?
 16 A Yes I did.
 17 Q Was Kinder and Bryant represented by
 18 counsel?
 19 A At one point, yes. I can't say that
 20 they were represented by counsel the whole time. I
 21 don't have that knowledge, but I do know I had
 22 correspondence with an attorney who was purporting
 23 to represent them.
 24 Q And who was that?
 25 A William Dobishinski,

<p style="text-align: right;">Page 14</p> <p>1 - R. Harris/Direct - 2 D-o-b-i-s-h-i-n-s-k-i I believe. 3 Q That's correct. 4 MS. PHARES: Your Honor, I'm offering 5 for identification an agreement dated June, 6 1985 between Sunbow and Kinder and Bryant for 7 the production "Jem" bearing production 8 number Sun 870 through 882. 9 (A document further described herein was 10 marked as Defendant's Exhibit M for 11 identification, as of this date.) 12 Q Do you recognize this agreement? 13 A Yes I do. 14 Q Were you involved with the negotiations 15 of this agreement? 16 A Yes I was. 17 Q And if you'll turn to Page 8, I'm 18 looking at the production number, Page 10 of the 19 agreement for Sun 879. 20 A Yes. 21 Q Who is the signatory for Sunbow? 22 A Carole Weitzman. 23 Q Do you recognize Miss Weitzman's 24 signature? 25 A Yes I do.</p>	<p style="text-align: right;">Page 16</p> <p>1 - R. Harris/Direct - 2 A It's an agreement between Sunbow and 3 Kinder and Bryant with respect to preparation of 4 music for the show "My Little Pony and Friends". 5 Q Do you recall whether or not you were 6 involved in the negotiations of the agreement? 7 A I believe that I was, yes. 8 Q And on Page 10 of the agreement, do you 9 recognize the signatory for Sunbow? 10 A Yes. 11 Q And who is it? 12 A Carole Weitzman. 13 MS. PHARES: Your Honor -- 14 Q And, Mr. Harris, are both of these 15 agreements the same, the form agreements that were 16 used by Sunbow to commission work for hire work 17 from composers? 18 A Yes. 19 MS. PHARES: I'm now offering for 20 identification -- 21 Before I do that, I'd like to move the 22 admission of Defendant's Exhibit N in 23 evidence. 24 MR. MONAGHAN: We have the same issue I 25 mentioned earlier which is this is not, these</p>
<p style="text-align: right;">Page 15</p> <p>1 - R. Harris/Direct - 2 Q Is that her signature? 3 A I believe so, yes. 4 MS. PHARES: Your Honor, I offer 5 Defendant's Exhibit M in evidence. 6 MR. MONAGHAN: No objection. 7 THE COURT: All right. Received in 8 evidence. 9 (A document previously marked as 10 Defendant's Exhibit M for identification was 11 received in evidence, as of this date.) 12 MS. PHARES: Your Honor, and I'm 13 offering for identification Defendant's 14 Exhibit N, an agreement dated 15 December 1st, 1985 between Sunbow 16 Productions and Kinder and Bryant bearing 17 production numbers Sun 883 through 895. 18 (Documents further described herein were 19 marked as Defendant's Exhibit N for 20 identification, as of this date.) 21 Q Mr. Harris, do you recognize the 22 document that's been identified as Defendant's 23 Exhibit N? 24 A Yes I do. 25 Q What is it?</p>	<p style="text-align: right;">Page 17</p> <p>1 - R. Harris/Direct - 2 are not songs that are at issue in this case. 3 THE COURT: All right. I'll allow it 4 in evidence. 5 (A document previously marked as 6 Defendant's Exhibit N for identification was 7 received in evidence, as of this date.) 8 MS. PHARES: And now I'm offering for 9 identification Defendant's Exhibit O, a 10 two page agreement between Sunbow 11 Productions and Kinder and Bryant dated 12 March 15th, 1986 with production numbers Sun 13 860 to 869. 14 (A document further described herein were 15 marked as Defendant's Exhibit O for 16 identification, as of this date.) 17 Q Mr. Harris, do you recognize this 18 agreement? 19 A Yes I do. 20 Q What is it? 21 A This appears to be an amendment to the 22 same agreement. 23 Q And on the second page, the signatory 24 for Sunbow is who? 25 A Carole Weitzman.</p>

<p style="text-align: right;">Page 18</p> <p>1 - R. Harris/Direct -</p> <p>2 MS. PHARES: Your Honor, I offer</p> <p>3 Defendant's Exhibit O in evidence.</p> <p>4 MR. MONAGHAN: We don't have any</p> <p>5 objection.</p> <p>6 THE COURT: All right. Received in</p> <p>7 evidence.</p> <p>8 (A document previously marked as</p> <p>9 Defendant's Exhibit O for identification was</p> <p>10 received in evidence, as of this date.)</p> <p>11 MS. PHARES: Your Honor, I'm offering</p> <p>12 for identification another agreement dated</p> <p>13 September 2nd, 1985 as Defendant's Exhibit P,</p> <p>14 it's an agreement between Gary Harmon and</p> <p>15 Sunbow Productions relating to the television</p> <p>16 show "Jem" bearing production numbers Sun 854</p> <p>17 through 867.</p> <p>18 (Documents further described herein were</p> <p>19 marked as Defendant's Exhibit P for</p> <p>20 identification, as of this date.)</p> <p>21 Q Have you had an opportunity to look at</p> <p>22 it?</p> <p>23 A Yes.</p> <p>24 Q Do you recognize this agreement?</p> <p>25 A Yes I do.</p>	<p style="text-align: right;">Page 20</p> <p>1 - R. Harris/Direct -</p> <p>2 habit evidence which I don't think is</p> <p>3 appropriate in this kind of a case. We have</p> <p>4 written documents, some of which have been</p> <p>5 and some--</p> <p>6 THE COURT: I guess the other question</p> <p>7 is, do you agree that it was a standard</p> <p>8 practice of Sunbow to have such agreements</p> <p>9 made?</p> <p>10 MR. MONAGHAN: No, we don't agree with</p> <p>11 that at all. It was a new company. I don't</p> <p>12 think it had standard practices.</p> <p>13 THE COURT: All right. Then I'll allow</p> <p>14 it in for whatever purpose or weight I want</p> <p>15 to put on it.</p> <p>16 (A document previously marked as</p> <p>17 Defendant's Exhibit P for identification was</p> <p>18 received in evidence, as of this date.)</p> <p>19 MS. PHARES: And now, your Honor, I'm</p> <p>20 offering for identification Defendant's</p> <p>21 Exhibit Q for identification, and this is a</p> <p>22 document which contains 14 agreements between</p> <p>23 Sunbow and either lyricists or composers from</p> <p>24 1983 to 1986.</p> <p>25 THE COURT: Are any of these parties to</p>
<p style="text-align: right;">Page 19</p> <p>1 - R. Harris/Direct -</p> <p>2 Q And what is it?</p> <p>3 A It's an agreement between Sunbow and</p> <p>4 BHB Productions for the services of Barry Harmon as</p> <p>5 a writer to write lyrics for songs to be used in</p> <p>6 television show called "Jem".</p> <p>7 Q And who is the signatory for Sunbow?</p> <p>8 A Appears to me to be the signatory of</p> <p>9 Thomas L. Griffin.</p> <p>10 Q Are you familiar with his signature?</p> <p>11 A Yes, I've seen it many times.</p> <p>12 MS. PHARES: Your Honor, I'd like to</p> <p>13 offer Defendant's Exhibit P in evidence.</p> <p>14 MR. MONAGHAN: I'd like a proffer on P</p> <p>15 since it's not between my client or Mr.</p> <p>16 Kinder and Sunbow.</p> <p>17 THE COURT: All right. I guess the</p> <p>18 question is why is it relevant?</p> <p>19 MS. PHARES: Because it has to do with</p> <p>20 the fact it is also, which I'm about to ask,</p> <p>21 one of the same form agreements that were</p> <p>22 used between writers, between composers or</p> <p>23 lyricists with Sunbow, that these are form</p> <p>24 agreements.</p> <p>25 MR. MONAGHAN: This is sort of like</p>	<p style="text-align: right;">Page 21</p> <p>1 - R. Harris/Direct -</p> <p>2 this lawsuit?</p> <p>3 MS. PHARES: Mr. Harmon -- no, parties</p> <p>4 to the lawsuit no, they are not. These are</p> <p>5 being offered to show the practice of using</p> <p>6 the same form agreement with all lyricists</p> <p>7 and composers.</p> <p>8 THE COURT: What's the difference</p> <p>9 between those and Mr. Harmon's agreements?</p> <p>10 MS. PHARES: The basic contract, they</p> <p>11 are not different. That's exactly the point.</p> <p>12 THE COURT: Isn't it cumulative then?</p> <p>13 MS. PHARES: It is not, we need the</p> <p>14 evidence though. Your Honor, if Mr. Monaghan</p> <p>15 is prepared to agree, which I thought I heard</p> <p>16 him just say that it was not the practice of</p> <p>17 Sunbow to do this, then I think it's not</p> <p>18 cumulative because I'm expecting that, and he</p> <p>19 has already raised the objection, that we do</p> <p>20 not have the signed agreements for the other</p> <p>21 Sunbow productions that are named in the</p> <p>22 complaint, and I am trying to lay a basis for</p> <p>23 the proper inference for the fact finder to</p> <p>24 draw that these were used in all cases, and</p> <p>25 that you can conclude that Kinder and Bryant</p>

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1 - R. Harris/Direct -
 2 signed them in all cases.
 3 MR. MONAGHAN: Your Honor, I haven't
 4 seen this before this moment, right here in
 5 Court, Number 1. Number 2, I come back to
 6 the issue of where's Carole Weitzman? Where
 7 is somebody from Sunbow to talk about its
 8 practices, A, and B, you may recall my little
 9 heading in one of the papers we submitted,
 10 Matsui's contract doesn't have to be the same
 11 as Jeter's contract or anybody else's
 12 contract. All these contracts presumably,
 13 counsel just said, although we disagree, that
 14 Dobishinski was Miss Bryant's-- we just said
 15 negotiations. Presuming there are
 16 negotiations.
 17 THE COURT: That's for cross
 18 examination.
 19 MR. MONAGHAN: To cut it short, I'm
 20 being asked to deal with an exhibit here
 21 we've never seen before with a bunch of
 22 contracts with a bunch of other people.
 23 THE COURT: But it's not going to, it's
 24 only in for the purpose, I take it, of
 25 bolstering the position of Sunbow that this

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1 - R. Harris/Direct -
 2 was their common practice which was to get
 3 these kind of contracts signed. For that
 4 limited purpose I'm going to allow it in
 5 evidence.
 6 MR. MONAGHAN: Okay.
 7 THE COURT: If there are any other
 8 exhibits along this line they will be
 9 cumulative.
 10 MS. PHARES: That's the end. I
 11 understand.
 12 (A document further described herein was
 13 marked as Defendant's Exhibit Q in evidence,
 14 as of this date.)
 15 Q And, Mr. Harris, have you had an
 16 opportunity to look through Defendant's Exhibit Q?
 17 A Yes I did.
 18 MR. MONAGHAN: I'd like to ask why we
 19 couldn't have had this before today to look
 20 at it, maybe have some meaningful cross
 21 examination on it, then I get it in the
 22 middle of the trial.
 23 THE COURT: I don't know what you can
 24 cross examine on. You're not asking to say
 25 well, these contracts are forged or

Page 24

1 - R. Harris/Direct -
 2 something, these are just examples. If we
 3 had a contract case about delivery of a
 4 widget, these are examples of the widgets.
 5 MR. MONAGHAN: I'm willing to stipulate
 6 that Sunbow says it was its standard
 7 practice.
 8 THE COURT: That's a step in the right
 9 direction.
 10 MR. MONAGHAN: It says it was its
 11 standard practice. I don't know if you even
 12 found it were standard practice why it's
 13 helpful on this case with these parties and
 14 these agreements and whatever they were.
 15 THE COURT: It is an unfolding mystery
 16 and we're going forward. Go ahead.
 17 Q Mr. Harris, you have had an opportunity
 18 to look through these contracts?
 19 A Yes.
 20 Q Are these all essentially the same form
 21 agreements that were used by Sunbow with composers
 22 and lyricists?
 23 A They're basically the same work for
 24 hire agreements.
 25 Q And I'm going to hand you again what's

Page 25

1 - R. Harris/Direct -
 2 already in evidence as Exhibit M which is the
 3 Kinder and Bryant "Jem" agreement. Just so we all
 4 know what we're talking about. The first ten pages
 5 of this agreement are the basic agreement; is that
 6 correct?
 7 A Yes.
 8 Q All right. And then could you just
 9 describe for the Court what is, what the Schedule A
 10 is on Page 11?
 11 MR. MONAGHAN: Which Exhibit are you?
 12 MS. PHARES: M.
 13 A This is a sort of an addendum form of
 14 which the individual writers of the corporation
 15 acknowledge that they wrote this material for the
 16 corporation which was the contracting party with
 17 Sunbow and that it was done on a work made for hire
 18 basis.
 19 Q So that they are acknowledging that
 20 their work for Kinder and Bryant was work for hire;
 21 is that correct?
 22 A Correct, yes.
 23 Q And what's the next, the thing that
 24 says, "inducement letter" at the top. What is
 25 that?

<p style="text-align: right;">Page 26</p> <p>1 - R. Harris/Direct -</p> <p>2 A An inducement letter is just for the</p> <p>3 individual writers so that it's clear that they</p> <p>4 know they are contracting through their</p> <p>5 corporation, that they will look solely to their</p> <p>6 corporation for payment, and that they make the</p> <p>7 same warranties and representations that had been</p> <p>8 made by their company, standing behind their</p> <p>9 company, so to speak.</p> <p>10 Q And are these additional amendments and</p> <p>11 schedules, these are part of the form Sunbow</p> <p>12 agreement?</p> <p>13 A Yes, I believe that I prepared these.</p> <p>14 Q All right. And except for the things</p> <p>15 like the initial creative fees or the number of</p> <p>16 songs for which music or lyrics were to be</p> <p>17 composed, these agreements that we have in evidence</p> <p>18 Defendant's Exhibits M, N and Q are essentially the</p> <p>19 same?</p> <p>20 A Yes.</p> <p>21 Q To your knowledge did Sunbow work with</p> <p>22 Kinder and Bryant without signing work made for</p> <p>23 hire agreements?</p> <p>24 MS. PHARES: Objection. Asked and</p> <p>25 answered.</p>	<p style="text-align: right;">Page 28</p> <p>1 - R. Harris/Cross -</p> <p>2 relationship of Griffin Bacal to Sunbow, if you</p> <p>3 know?</p> <p>4 A They were affiliated companies.</p> <p>5 Q In fact they were commonly owned,</p> <p>6 weren't they, by Messrs. Bacal and Griffin?</p> <p>7 MS. PHARES: Objection, your Honor,</p> <p>8 this is outside the scope of the direct.</p> <p>9 THE COURT: I'll allow it.</p> <p>10 A I believe that's correct.</p> <p>11 Q Okay. Now, when -- you put in an</p> <p>12 affidavit in this case a while back, did you not?</p> <p>13 A Yes I did.</p> <p>14 Q And am I correct, and I unfortunately</p> <p>15 didn't anticipate you being here today so I didn't</p> <p>16 bring the whole file although we bought a bunch of</p> <p>17 stuff, my recollection is that in that affidavit</p> <p>18 you said you really didn't recall these agreements;</p> <p>19 isn't that right?</p> <p>20 A I don't recall saying that I didn't</p> <p>21 recall the agreements. I thought I said I didn't</p> <p>22 recall the specifics of each agreement.</p> <p>23 Q Okay. And I think I heard you say a</p> <p>24 while ago that you negotiate with a gentleman named</p> <p>25 Dobishinski?</p>
<p style="text-align: right;">Page 27</p> <p>1 - R. Harris/Cross -</p> <p>2 THE COURT: I think it might have been.</p> <p>3 I'll allow it. Go ahead.</p> <p>4 A Not to my knowledge.</p> <p>5 Q And to your knowledge did any creative</p> <p>6 person or entity working on the "Hasbro" TV</p> <p>7 productions not sign a --</p> <p>8 MR. MONAGHAN: Objection. He cannot</p> <p>9 answer that question.</p> <p>10 THE COURT: I think it's asked and</p> <p>11 answered.</p> <p>12 MS. PHARES: Asked and answered. I'll</p> <p>13 go with that. I pass the witness.</p> <p>14 MR. MONAGHAN: Thank you.</p> <p>15 CROSS EXAMINATION BY MR. MONAGHAN:</p> <p>16 Q Mr. Harris, you've testified, I</p> <p>17 believe, that you did work for Sunbow Productions,</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q That was a TV production company,</p> <p>21 correct?</p> <p>22 A Yes it was.</p> <p>23 Q Are you familiar with Griffin Bacal?</p> <p>24 A Yes I am.</p> <p>25 Q And to your knowledge what was the</p>	<p style="text-align: right;">Page 29</p> <p>1 - R. Harris/Cross -</p> <p>2 A Yes I did.</p> <p>3 Q Were you aware that Dobishinski was</p> <p>4 Sunbow's administrator?</p> <p>5 A To my knowledge he became the</p> <p>6 administrator subsequently.</p> <p>7 Q And what is that knowledge based upon?</p> <p>8 A My memory.</p> <p>9 Q Okay. Now, you are familiar with the</p> <p>10 concept of work for hire under the Copyright Act;</p> <p>11 are you not?</p> <p>12 A Yes I am.</p> <p>13 Q And isn't it a fact that in order for</p> <p>14 the commissioning party to actually register the</p> <p>15 copyright they must obtain a written agreement to</p> <p>16 do that?</p> <p>17 A Yes, if it's a commissioned work for</p> <p>18 hire as opposed to a different type of work for</p> <p>19 hire.</p> <p>20 Q What are we talking about, Section 101</p> <p>21 of the Copyright Act?</p> <p>22 A Yes.</p> <p>23 Q And so that when a songwriter is hired</p> <p>24 to write a song, in order for the song to be</p> <p>25 exploited by someone else, the commissioning party,</p>

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1 - R. Harris/Cross -
 2 they in effect have to sign a work for hire
 3 agreement, don't they?
 4 A Yes, or they can get an assignment or a
 5 license.
 6 Q Okay. So that it is normal practice in
 7 the entertainment industry for those commissioning
 8 them to obtain these work for hire agreements so
 9 that they can exploit the song on the mutual behalf
 10 of both the songwriter and the commissioning party;
 11 isn't that correct?
 12 A Yes.
 13 Q Okay. Now, the fact that there is a
 14 work for hire agreement does not mean necessarily
 15 that no rights are retained by the composer; isn't
 16 that so?
 17 A It depends on the agreement.
 18 Q Right. And isn't it standard industry
 19 practice for a writer to retain certain publishing
 20 interests notwithstanding it's a work for hire
 21 agreement?
 22 MS. PHARES: Objection, your Honor, we
 23 are now going right down the path that I
 24 predicted we would go. We are not here to
 25 discuss what rights get exchanged, what is in

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1 - R. Harris/Cross -
 2 this agreement, only are they the same
 3 agreements and are they genuine.
 4 THE COURT: Well, I think that first
 5 it's far beyond direct, though I allowed you
 6 some leeway, and while I'm clear that Mr.
 7 Harris is an expert in his field he hasn't
 8 really been qualified that he knows
 9 everything about what happens in this
 10 industry.
 11 MR. MONAGHAN: I'm actually referring
 12 to Exhibit M.
 13 THE COURT: Let's talk about Exhibit M
 14 then.
 15 MR. MONAGHAN: That's fine, Judge.
 16 Q Mr. Harris, you talked about Exhibit M.
 17 You were intimately familiar with this agreement,
 18 correct?
 19 A I can't see it from here.
 20 Q I'm sorry, that's the "Jem" agreement.
 21 A Okay. Thank you.
 22 Q Okay.
 23 A Yes, sir.
 24 Q And this agreement that you were
 25 involved with provides that the composers will

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1 - R. Harris/Cross -
 2 retain, for example, publishing, I'm sorry, let's
 3 start with performance royalties, correct?
 4 THE COURT: Could you direct both the
 5 witness and myself whatever paragraph you're
 6 dealing with?
 7 MS. PHARES: Your Honor, we will
 8 stipulate that in this agreement in Paragraph
 9 Five the commissioning party Sunbow grants
 10 to, grants to Kinder and Bryant the rights to
 11 receive their performance royalties.
 12 MR. MONAGHAN: Okay. I don't need the
 13 stipulation right now because I'm asking the
 14 witness who was involved with it. That's
 15 what this agreement provides.
 16 MS. PHARES: That's what you asked.
 17 I'm going to stipulate to it. So we can move
 18 on.
 19 THE COURT: Go ahead. It's in record
 20 now.
 21 MR. MONAGHAN: That's stipulated.
 22 THE COURT: That is stipulated.
 23 Q And this also provides for certain
 24 other continuing interests in the writer, does it
 25 not?

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1 - R. Harris/Cross -
 2 A Yes, some financial participation, yes.
 3 Q And that is also standard; is it not?
 4 A Yes, it is.
 5 Q Okay. Now, these "Jem" compositions
 6 which are the subject of this agreement, Exhibit M
 7 in evidence, are those all the "Jem" songs?
 8 MS. PHARES: Your Honor, we are way
 9 past the scope of the direct.
 10 A Which "Jem" songs are you referring to?
 11 THE COURT: I'm going to allow it for a
 12 little while. Go ahead.
 13 Q Which "Jem" songs were referred to in
 14 Exhibit M?
 15 A Well, these are songs that were to be
 16 written. I don't think they were written at the
 17 time.
 18 Q Okay. Do you know when the
 19 compositions were actually written?
 20 A No, I don't have personal knowledge.
 21 Q Okay. Do you know whether there were
 22 "Jem" songs that were not written for the TV
 23 production?
 24 MS. PHARES: Mr. Monaghan, could you
 25 please stand at the lectern so I can see the

<p style="text-align: right;">Page 34</p> <p>1 - R. Harris/Cross - 2 witness. 3 A I don't know. 4 Q Were you familiar with a toy called the 5 "Jem" toy, the "Jem" doll? 6 A Yes. 7 Q Do you know whether or not there were-- 8 are you familiar with the "Jem" theme? 9 A I was at one time. I don't recall. 10 Sorry. 11 Q Do you know whether the "Jem" theme was 12 the subject of this agreement? 13 MS. PHARES: Objection. 14 THE COURT: What's the objection? 15 MS. PHARES: It's beyond the scope of 16 the, both the hearing and the direct. 17 THE COURT: Well, this document was put 18 in during your direct. 19 MS. PHARES: That's true but it was not 20 put in, there was no subject that was written 21 pursuant to it. 22 THE COURT: Let me see if I understand 23 the question here. What you're saying is 24 before this there was an agreement to create 25 the "Jem" jingle or song; is that correct?</p>	<p style="text-align: right;">Page 36</p> <p>1 - R. Harris/Cross - 2 "Jem" agreement, I think you have it in front of 3 you, right, Mr. Harris -- 4 A Yes I do. 5 Q --when was this actually completed and 6 signed, if you recall? 7 A I don't have a clear recollection. 8 Q I recall, perhaps you can correct me, 9 seeing a letter from you dated 1987 referring to 10 the unsigned "Jem" agreement, an issue which was 11 previously raised in this case between Sunbow-- 12 MS. PHARES: Your Honor -- 13 MR. MONAGHAN: Can I finish? 14 MS. PHARES: If he's going to refer to 15 a document and ask the witness about it he 16 should show the witness the document. 17 MR. MONAGHAN: We're talking about this 18 exhibit here. (Indicating.) 19 MS. PHARES: 30, no. The letter you 20 just referred to. -- 21 MR. MONAGHAN: I don't have it with me. 22 Maybe you have it. 23 MS. PHARES: No, I don't. 24 MR. MONAGHAN: Okay. 25 Q Do you recall referring in</p>
<p style="text-align: right;">Page 35</p> <p>1 - R. Harris/Cross - 2 MR. MONAGHAN: This one is the reverse 3 of what we said with respect to the others. 4 This was first a TV show and then later taken 5 and made as a jingle for the toy, so it's the 6 reverse of, for example, what we're talking-- 7 THE COURT: Well, in any case this is 8 an agreement that covers every song that the 9 company asked the writers to create for them, 10 doesn't it? 11 MR. MONAGHAN: Only the subject songs, 12 the "Jem" songs. 13 THE COURT: Yes. 14 MR. MONAGHAN: Nothing else. 15 Now, may I continue? 16 THE COURT: Yes. 17 Q Now, were you the counsel for Griffin 18 Bacal, Inc. 19 A Yes. 20 Q And did you deal with all of the 21 agreements with composers with respect to jingles 22 that were commissioned by Griffin Bacal, Inc.? 23 A I can't specifically recall and say 24 every agreement. I have no basis to say that. 25 Q Okay. And when was this Exhibit M, the</p>	<p style="text-align: right;">Page 37</p> <p>1 - R. Harris/Cross - 2 correspondence as late as 1987 to an unsigned "Jem" 3 agreement? 4 A I don't. I recall -- I don't remember 5 the year. I remember having some correspondence 6 with Dobishinski and referring to the previous 7 agreement. I don't remember saying unsigned. 8 You'd have to show me the documents. 9 Q Okay. If I had known you were going to 10 be a witness I promise I would have brought that. 11 Now, can you account for the 12 handwritten 5, apparently a 5 on the first line of 13 Exhibit M? 14 A It looks like my handwriting, by the 15 way. I can't precisely recollect but I assume that 16 that was the date at which we deemed there to be an 17 agreement. I don't recall the actual date of 18 physical signature. 19 Q Did I just hear you say that was the 20 date we deemed it to be an agreement? 21 A My recollection, I'm not sure whether 22 that was an agreed date or was the actual date. It 23 says, "made of this 1st day." 24 Q Well, would you agree with me -- by the 25 way, was this done in your office, the typewritten</p>

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1 - R. Harris/Cross -
 2 agreement?
 3 A Yes, I believe so.
 4 Q Would you agree with me that underneath
 5 that handwritten 5 there's a typewritten 6?
 6 A It looks like it to me from here.
 7 Q Okay. Do you know that the "Jem" songs
 8 were recorded on March 7th of 1985?
 9 A I don't know the date the songs were
 10 recorded.
 11 Q Do you know they were recorded in 1985?
 12 MS. PHARES: Objection, your Honor.
 13 THE COURT: Sustained.
 14 Q Now, and you believe that's your --
 15 A I think it is. It's hard to tell from
 16 one digit.
 17 Q And what circumstances caused you to
 18 put that date in? What was it that triggered
 19 concerning that date?
 20 A I don't recall.
 21 Q Do you recall there being a series of
 22 negotiations following June of 1985 for a year or
 23 so more during which the parties were still
 24 dickering over some of the terms?
 25 A I do recall some negotiations with the

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1 - R. Harris/Cross -
 2 attorney, yes. Without seeing the correspondence I
 3 don't remember the exact time frame.
 4 MS. PHARES: Objection, your Honor. I
 5 don't understand the basis of what the
 6 purpose of this testimony is.
 7 THE COURT: Well, are we going to come
 8 down to eventually, this document is
 9 purportedly signed by people, and are you
 10 saying that, you lost me too, that there was
 11 another document somewhere or that this was
 12 signed later and referred back?
 13 MR. MONAGHAN: It looks like that,
 14 that's what it looks like.
 15 THE COURT: Even if that were true
 16 wouldn't it be binding?
 17 MR. MONAGHAN: It could be but if it
 18 has, for example, implications on the work
 19 for hire doctrine, and for example, the
 20 copyrights -- let me ask the witness.
 21 Q Do you know when these songs were
 22 copyrighted?
 23 A No I do not.
 24 Q And if this agreement was not actually
 25 executed or deemed effective until after the

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1 - R. Harris/Cross -
 2 registration of the copyright those copyright
 3 registrations would be flawed I take it, wouldn't
 4 they, because they were registrations without a
 5 written agreement?
 6 A Well, if you're asking me for a legal
 7 opinion on the validity of the registration I can't
 8 answer that. I'd have to check that out. I'm not
 9 sure those registrations would be invalid.
 10 Q You're not sure?
 11 A No. I wouldn't give you that legal
 12 conclusion.
 13 Q Now, coming back to who Dobishinski
 14 was, do you know that Carole Weitzman has testified
 15 that Sunbow hired Mr. Dobishinski?
 16 A I don't know any of Carole Weitzman's
 17 testimony.
 18 Q And do you know whether or not the
 19 other agreement "My Little Pony and Friends" the
 20 other binder, do you know whether that has anything
 21 to do with this case in terms of the music that is
 22 at issue here?
 23 A I'm not sure I understand your
 24 question.
 25 Q That's the question. Do you know

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1 - R. Harris/Cross -
 2 whether that particular binder and the agreements
 3 you've talked about, Exhibit L, has anything to do
 4 with any of the songs at issue in this case?
 5 A I'd have to see L. Which is L? L deals
 6 with writings for "My Little Pony", yes.
 7 Q And do you know whether Kinder and
 8 Bryant actually wrote the music for the TV show,
 9 the TV production?
 10 A I can't answer whether anybody actually
 11 wrote anything. I did the contracts. I was not
 12 involved in production.
 13 Q And when you say you were familiar with
 14 the policies of Sunbow, you're basing that on the
 15 work you did as outside counsel for Sunbow?
 16 A That's correct.
 17 Q And primarily your dealings with Carole
 18 Weitzman?
 19 A Yes, on these projects, yes, and Tom
 20 Griffin both.
 21 Q Do you know why Carole Weitzman isn't
 22 here testifying today?
 23 A No I do not.
 24 Q Have you had any discussions with
 25 Carole Weitzman in the last let's say six,

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1 - R. Harris/Cross -
2 eight months?
3 A Not within the last six, eight years
4 perhaps.
5 Q And you said it was your practice to
6 send the agreements out and then hopefully have
7 them returned countersigned by the appropriate
8 parties?
9 A Generally, yes.
10 Q Okay. And if the agreement were not
11 countersigned would you agree with me that it would
12 not be effective?
13 A Well, you're asking me for a legal
14 conclusion.
15 Q Well, let's say we're going to see some
16 "Transformer" agreements in here that are not
17 countersigned by anybody and they're copies. Would
18 you regard that as an effective agreement?
19 MS. PHARES: Objection. Mr. Harris is
20 being offered as a fact witness.
21 MR. MONAGHAN: You've offered him.
22 THE COURT: Sustained.
23 MR. MONAGHAN: Give me 30 seconds, your
24 Honor.
25 THE COURT: Yes.

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1 - R. Harris/Cross -
2 (Pause.)
3 Q Do you know the name Spence Michlin?
4 A I've heard the name, yes.
5 Q Who is that?
6 MS. PHARES: Objection. Relevance.
7 THE COURT: What's the purpose?
8 MR. MONAGHAN: It's in the agreements
9 that they have been offering on
10 "Transformers". There's a reference. We
11 brought this out in our papers that one of
12 the agreements, two of the agreements, those
13 Exhibits B and C, Defendant's B and C that we
14 saw at the last hearing, we've said they're
15 forgeries, Mr. Kinder said they're forgeries
16 and one of the --
17 THE COURT: The only forgeries that
18 this Court is interested in is whether there
19 was a Kinder or Bryant forgery. That's what
20 we're talking about.
21 MS. PHARES: On a Sunbow agreement. On
22 a Sunbow agreement is what we're talking
23 about.
24 Q I'm referring to Defendant's B and
25 Defendant's C that were offered--

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1 - R. Harris/Cross -
2 MS. PHARES: Those are GBI agreements.
3 MS. BRYANT: You brought them in.
4 MR. MONAGHAN: The witness just
5 testified he did work for GBI. I want to
6 know if he did these agreements which are
7 contested.
8 MS. PHARES: He was asked a question
9 outside of the direct. He answered the
10 question. That doesn't allow a bootstrap for
11 us to start discussing GBI agreements.
12 MR. MONAGHAN: These are agreements at
13 issue in the case.
14 MS. PHARES: No they are not.
15 MR. MONAGHAN: Why did you use them in
16 examining my client?
17 MS. PHARES: For impeachment.
18 MR. MONAGHAN: That's what I'm using
19 them for now.
20 THE COURT: Well, I don't know that
21 you're up to impeachment.
22 Mr. Harris, what do you know about GBI
23 agreements?
24 THE WITNESS: I worked on a number of
25 them, not every one of them. It's a big

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1 - R. Harris/Cross -
2 company. It's an advertising agency.
3 THE COURT: So you're going to ask Mr.
4 Harris now whether there's a forgery on one
5 of these --
6 MR. MONAGHAN: No, I mentioned, your
7 Honor, if I may, that two of those have the
8 name Spence Michlin in there as though Spence
9 Michlin was somehow connected with Kinder and
10 Bryant when he wasn't. We're trying to get
11 to the bottom of -- here's a person who
12 worked on these agreements. Would he know
13 Mr. Michlin is slipped in a Kinder Bryant
14 agreement?
15 Q Do you have any knowledge about that,
16 Mr. Harris?
17 MS. PHARES: Your Honor, the focus of
18 the hearing today is to determine the
19 authenticity of the agreements between Kinder
20 and Bryant and Sunbow and whether or not
21 there was some reason why Spence Michlin was
22 mentioned in agreement between Kinder and
23 Bryant and GBI is not --
24 THE COURT: Well, I'll tell you what.
25 Because I am actually curious I'm going to

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1 - R. Harris/Cross -
 2 let the witness answer this one question. Do
 3 you know the answer to that question?
 4 THE WITNESS: I don't know what
 5 "slipped in" means. I don't think I slipped
 6 anything. If I were involved in the
 7 document, I don't know that I was, but I
 8 can't explain the connection between Michlin
 9 and Kinder and Bryant. I have no knowledge.
 10 THE COURT: Okay. That's the end of it.
 11 MR. MONAGHAN: I'm sorry. I was looking.
 12 THE COURT: He says he doesn't know why
 13 there would be any reference and certainly it
 14 wasn't slipped in, that's a little
 15 editorializing, into an agreement. He doesn't
 16 know why it would be there.
 17 Q You had no information that Spence
 18 Michlin had anything at all to do with Kinder
 19 Bryant?
 20 A I have no personnel knowledge of that.
 21 Q Did you know that Michlin did work for
 22 Bacal and for Sunbow?
 23 MS. PHARES: Objection.
 24 THE COURT: Sustained.
 25 MR. MONAGHAN: If I can ask the witness

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1 - R. Harris/Cross -
 2 if he recognizes the writing on that
 3 agreement we're talking about which is the,
 4 which is --
 5 MS. PHARES: You have not given him
 6 anything.
 7 MR. MONAGHAN: You gave me this. This is
 8 your binder. (Indicating.)
 9 MS. PHARES: Why don't you tell him what
 10 you're looking at so he can answer.
 11 MR. MONAGHAN: Thanks. I'm talking
 12 about the GBI "Transformer" agreement which
 13 counsel labeled 1984 and I'd like to ask the
 14 witness, if I may, what he knows about this
 15 agreement, your Honor.
 16 THE COURT: All right. Ask him.
 17 MS. PHARES: Which exhibit are we
 18 looking at?
 19 MR. MONAGHAN: We're looking at the
 20 binder you gave me.
 21 MS. PHARES: What binder? You're
 22 looking at some other binder of your own.
 23 THE COURT: Is it Q? All right. Q is
 24 in evidence.
 25 MS. PHARES: No, no. I beg your pardon,

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1 - R. Harris/Cross -
 2 your Honor. What Mr. Monaghan is looking at
 3 is the notebook that we three looked at at
 4 the hearing on September 13th which has never
 5 been put in evidence.
 6 MR. MONAGHAN: Okay. Let's mark it for
 7 identification. I'll take it out of the
 8 binder.
 9 THE COURT: I think you're going pretty
 10 far afield but I'll let you mark it.
 11 (A notebook further described herein was
 12 marked as Plaintiff's Exhibit 47 for
 13 identification, as of this date.)
 14 Q Would you take a look at 47, Mr.
 15 Harris?
 16 A (Witness Complies.)
 17 THE COURT: How are you denominating
 18 47?
 19 MR. MONAGHAN: What it is?
 20 THE COURT: Yes.
 21 MR. MONAGHAN: It is, purports to be the
 22 1984 "Transformers" agreement with GBI. Just
 23 for the Court this is one of the documents
 24 that Mr. Kinder said was forged.
 25 MS. PHARES: No. I beg your pardon. This

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1 - R. Harris/Cross -
 2 is one in which he admits.
 3 MS. BRYANT: And I do too.
 4 MS. PHARES: Also so does Ms. Bryant
 5 admit she signed this.
 6 MR. MONAGHAN: Okay. I stand corrected.
 7 I still have to ask him a question.
 8 THE COURT: All right.
 9 Q Are you familiar with this?
 10 A I don't recall it.
 11 Q Okay.
 12 A It doesn't come to my mind. I'm not
 13 saying I didn't participate on this form. It
 14 doesn't look that familiar to me.
 15 Q Can you identify the handwriting on the
 16 side which appears to be the same as the next page?
 17 A I cannot. I do not believe it's mine.
 18 MS. PHARES: Your Honor, there's no
 19 question about the genuineness of this
 20 document.
 21 THE COURT: Let's go onto something
 22 else. Let's stick to the direct at this
 23 point. We have to move along.
 24 MR. MONAGHAN: I don't have any further
 25 questions.

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1 - R. Harris/Redirect -
 2 THE COURT: Any redirect?
 3 MS. PHARES: Yes, your Honor, just one.
 4 REDIRECT EXAMINATION BY MS. PHARES:
 5 Q Mr. Harris, I'm handing you what has
 6 already been admitted in evidence as Defendant's
 7 Exhibit H. Are you familiar, have you ever seen
 8 this letter before?
 9 A Yes I have.
 10 Q And just to remind the Court, would you
 11 explain what this letter is?
 12 A It was a letter from an attorney Bill
 13 Dobishinski who says to me that he's referring to
 14 the agreements for "Jem" and "My Little Pony" which
 15 he discussed with his clients, and although they
 16 appreciate certain changes that were in those
 17 agreements they would like to raise some additional
 18 points that they would like changed.
 19 Q And is there any handwriting on this
 20 agreement?
 21 A Yes there is.
 22 Q Whose is it?
 23 A I believe it's mine.
 24 Q All right. And in the last paragraph on
 25 the second page with roman numeral D, would you

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1 - R. Harris/Redirect -
 2 please read the typed question that Mr. Dobishinski
 3 consist you?
 4 A "Please advise us regarding the desired
 5 dates to be inserted in the agreements."
 6 Q And is the handwriting under that your
 7 agreement, your handwriting?
 8 A Yes it is.
 9 Q And what's the date that you've written
 10 there for "Jem"?
 11 A 6-1-85.
 12 MS. PHARES: That's all, your Honor.
 13 MR. MONAGHAN: May I see that?
 14 MS. PHARES: Just to finish up.
 15 CONT'D REDIRECT EXAMINATION BY MS. PHARES:
 16 Q On the Defendant's Exhibit M, is that
 17 the date that is the date of the agreement?
 18 A Yes.
 19 MS. PHARES: Thank you.
 20 (Document shown to counsel.)
 21 MR. MONAGHAN: Are you going to offer
 22 this?
 23 MS. PHARES: It's in evidence. I just
 24 took it out of the box.
 25 MR. MONAGHAN: Okay. I don't know if

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1 - R. Harris/Recross -
 2 this is in. It says Id.
 3 MS. PHARES: I think it's in evidence.
 4 It's in the box.
 5 MR. MONAGHAN: I'll stipulate --
 6 THE COURT: It's in evidence now.
 7 MR. MONAGHAN: Fine. If it wasn't
 8 before. I'm just going by the sticker. I'd be
 9 happy to have it in evidence.
 10 THE COURT: Good. All right. Are you
 11 through?
 12 MS. PHARES: I'm through.
 13 THE COURT: Go ahead, Mr. Monaghan.
 14 MR. MONAGHAN: Thank you, Judge.
 15 RECROSS EXAMINATION BY MR. MONAGHAN:
 16 Q So this letter refreshes your
 17 recollection that this was the precipitating factor
 18 which caused you to insert the date 1985 in Exhibit
 19 M, the agreement?
 20 A I think so, yes.
 21 Q You think so?
 22 A I think so.
 23 Q And so that certainly before March of
 24 1986 at least there apparently was not a final
 25 agreement reached between the parties; is that

Page 53

1 - R. Harris/Recross -
 2 right?
 3 A That's included. I'm not saying there
 4 wasn't an agreement.
 5 Q Well, if you didn't insert the date--
 6 did you have signatures on the agreement before
 7 March of '86?
 8 A I don't recall.
 9 Q But it would seem that the agreement
 10 was not finalized in all respects including the
 11 date as late as March of 1987?
 12 MS. PHARES: Objection. The witness has
 13 answered.
 14 THE COURT: I'll allow it. It seems to
 15 me, Mr. Monaghan, that you get yourself into
 16 this problem. If you're saying that there was
 17 a problem with the copyrighting of these,
 18 these particular documents or songs, then
 19 you're in the wrong courthouse.
 20 MR. MONAGHAN: We never contested the
 21 copyrighting.
 22 THE COURT: Why were you asking these
 23 questions?
 24 MR. MONAGHAN: Because the -- it does
 25 not deal with all the songs.

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1 -G. Lesnevich/Direct -
 2 THE COURT: All right.
 3 MR. MONAGHAN: No further questions.
 4 THE COURT: Okay. Thank you. You may
 5 step down.
 6 (Witness Excused.)
 7 MS. PHARES: Your Honor, I call Mr. Gus
 8 Lesnevich.
 9 GUS LESNEVICH,
 10 having been duly sworn was examined
 11 and testified as follows:
 12 COURT OFFICER: State your name, spell
 13 your name and give your business address.
 14 THE WITNESS: Gus Robert Lesnevich,
 15 L-e-s-n-e-v-i-c-h, 270 West Lancaster Avenue,
 16 Malvern, Pennsylvania.
 17 DIRECT EXAMINATION BY MS. PHARES:
 18 Q Mr. Lesnevich, what is your title and
 19 how are you employed?
 20 A I'm a forensic document examiner, more
 21 commonly referred to as a handwriting expert and
 22 I'm self employed.
 23 Q Do you know Anne Bryant, the plaintiff
 24 in this case?
 25 A No.

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1 -G. Lesnevich/Direct -
 2 Q Until I asked you to testify in this
 3 case had you ever heard of Sunbow Productions,
 4 Inc.?
 5 A No.
 6 Q How long have you been employed in the
 7 field of forensic document examination?
 8 A As a full time profession approximately
 9 36 years.
 10 Q And for whom have you been employed?
 11 A Originally began working in the field
 12 of questioned documents when I was assigned to the
 13 United States Army Criminal Investigation
 14 Laboratory where I worked as an examiner in the lab
 15 of the United States and also as Chief of a
 16 Questioned Document Unit at the Army Crime Lab in
 17 Vietnam. After leaving military service I briefly
 18 entered private practice in Atlanta, Georgia. While
 19 in private practice I was recruited by the United
 20 States Secret Service. Subsequently joined their
 21 staff as one of their senior experts and was with
 22 them for about eight years. I then left the secret
 23 service and reentered private practice.
 24 Q And since entering private practice do
 25 you still work for government agencies?

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1 -G. Lesnevich/Direct -
 2 A Yes I do.
 3 Q And which agencies do you work for?
 4 A Most of my practice is civil. 35,
 5 40 percent of my work involves government agencies.
 6 I work for various U.S. Attorney's Offices,
 7 particularly New York City and Newark, New Jersey.
 8 I work for the Attorney General's Office in the
 9 State of Pennsylvania, various District Attorney's
 10 Offices.
 11 Q Would you please state some of the more
 12 notable civil cases in which you have testified?
 13 A The ones that people would know are
 14 probably cases related to the government, not civil
 15 cases, most people don't recognize civil cases.
 16 I've been retrained to work on cases, I did the
 17 Iran contra-affair involving Oliver North
 18 Poindexter Secort; I did the Vince Foster suicide;
 19 I did the work involving Leona Helmsley; Bes
 20 Myerson; Don King. I've done work on Bin Laden on
 21 some of the bombings, especially the embassy
 22 bombings in Africa and a number of other cases.
 23 Q Were you retained to do any work with
 24 respect to the "Harry Potter" series?
 25 A Yes I was retained to examine the

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1 -G. Lesnevich/Direct -
 2 records and documents in that case.
 3 MR. MONAGHAN: We stipulate, but I'm
 4 sure they want to go through as well. In fact
 5 that's how they got him, from me.
 6 THE COURT: Go ahead, counselor.
 7 Q What kind of studies and training have
 8 you had for your work?
 9 A There are no universities or colleges
 10 that offer degrees in handwriting identification or
 11 forensic documentation. The only way a person can
 12 learn the profession is by serving an old-fashion
 13 apprenticeship training program under the direct
 14 supervision of senior experts. In my case I
 15 completed a two-year course of instruction at the
 16 United States Army Criminal Investigation
 17 Laboratory which at that time was located at Fort
 18 Gordon, Georgia. Training consisted of sitting
 19 side-by-side with experts, looking over their
 20 shoulder, being exposed to the various cases,
 21 working cases with other experts, doing research in
 22 the field of questioned documents, reading the
 23 various literature on documents and questioned
 24 documents and being tested throughout the training
 25 program as to the various phases that I was going

<p style="text-align: right;">Page 58</p> <p>1 -G. Lesnevich/Direct -</p> <p>2 through. Upon completion of the training program I</p> <p>3 was then certified by the Department of Defense,</p> <p>4 United States Army, as an examiner in questioned</p> <p>5 documents and then began work in that field.</p> <p>6 Q How much time do you devote to this</p> <p>7 work?</p> <p>8 A All of my working time. It's how I make</p> <p>9 my living.</p> <p>10 Q And I take it you have testified in a</p> <p>11 Court of law as an expert in the field of forensic</p> <p>12 document examination?</p> <p>13 A Yes. I've done testifying in Courts,</p> <p>14 arbitration hearings and various procedures now for</p> <p>15 about 34 years.</p> <p>16 Q Have you ever worked in cases for a</p> <p>17 foreign agency or government?</p> <p>18 A Yes I have.</p> <p>19 Q Can you identify some of them?</p> <p>20 A Yes. I've done work with the overseas</p> <p>21 governments of South Korea, South Vietnam,</p> <p>22 Australia, New Zealand. I've also done work with</p> <p>23 the overseas embassies of Great Britain and France.</p> <p>24 Q Now that you have become a more senior</p> <p>25 person do you also teach in the field of forensic</p>	<p style="text-align: right;">Page 60</p> <p>1 -G. Lesnevich/Direct -</p> <p>2 the dotted line would be. Your lower case letters</p> <p>3 a, e and o would be half the height of capital</p> <p>4 letters. There would be uniformity in writing. A</p> <p>5 teacher will come to a student, the student will</p> <p>6 have what they call a copybook in front of them or</p> <p>7 sheet of paper which has solid lines, dotted lines</p> <p>8 and solid lines. The teacher will place into the</p> <p>9 hand of the student and tell the student or</p> <p>10 instruct the student how to properly hold the</p> <p>11 writing instrument. Usually when the teacher moves</p> <p>12 to the next student that student takes the</p> <p>13 instrument and moves it to how they feel</p> <p>14 comfortable writing with it. What happens is the</p> <p>15 student begins to process by seeing images and</p> <p>16 reproducing images in the copybook. When they do</p> <p>17 that they develop hand eye coordination. They also</p> <p>18 develop form perception and how they can take those</p> <p>19 forms and then reproduce them. Most importantly</p> <p>20 what they do is they develop the various nerves and</p> <p>21 muscles that go through the fingers, wrists, elbow,</p> <p>22 shoulder, and in some cases even your back there's</p> <p>23 muscles that move when you write. Over a period of</p> <p>24 time, over many years when an individual begins to</p> <p>25 write without looking at the blackboard, when they</p>
<p style="text-align: right;">Page 59</p> <p>1 -G. Lesnevich/Direct -</p> <p>2 document examination?</p> <p>3 A I've trained individuals in their</p> <p>4 training program going through training in the</p> <p>5 field of questioned documents. I don't do a lot of</p> <p>6 teaching anymore.</p> <p>7 MS. PHARES: Your Honor, I offer Mr.</p> <p>8 Lesnevich as an expert in the examination of</p> <p>9 forensic documentation.</p> <p>10 MS. MONAGHAN: We accept that.</p> <p>11 THE COURT: All right. Accepted as an</p> <p>12 expert.</p> <p>13 Q Would you explain to the Court how a</p> <p>14 person can be identified through handwriting</p> <p>15 examination?</p> <p>16 A Yes. When a person first learns to</p> <p>17 write back in elementary school there's usually</p> <p>18 across the top of the blackboard the printed</p> <p>19 alphabet, A, B, C, D, and that alphabet above the</p> <p>20 blackboard has a solid line, a dotted line and a</p> <p>21 solid line. Every capital letter is exactly the</p> <p>22 same height, so if you had a capital A it would be</p> <p>23 like a teepee and then a cross-bar right where the</p> <p>24 dotted line would be. If you had a capital B you'd</p> <p>25 have the staff and two half circles meeting where</p>	<p style="text-align: right;">Page 61</p> <p>1 -G. Lesnevich/Direct -</p> <p>2 can pick up a writing instrument and hold it</p> <p>3 comfortably to them, and automatically they begin</p> <p>4 to write, and as that writing is written naturally</p> <p>5 and spontaneously with quickness, at the same time</p> <p>6 that writing differs from that perfected uniformity</p> <p>7 you started with then it becomes highly unique to</p> <p>8 one individual. When you have complete agreements</p> <p>9 in speed and quickness of writing and uniformity of</p> <p>10 how the letters are formed then you can make an</p> <p>11 identification of the person writing something.</p> <p>12 Q Okay. I'm going to hand you what is</p> <p>13 already in evidence as Defendant's Exhibits M and</p> <p>14 N. In Defendant's Exhibit M, would you please turn</p> <p>15 to the Page 11, which is the page with Sunbow</p> <p>16 Production Number 880, and I invite your attention</p> <p>17 to the signatures on the line with the typed name</p> <p>18 Anne Bryant.</p> <p>19 A Yes.</p> <p>20 Q Have you examined that signature?</p> <p>21 A Yes I have.</p> <p>22 Q When you made your examination did you</p> <p>23 examine an original document or a photocopy?</p> <p>24 A An original document.</p> <p>25 Q And did you obtain that from me?</p>

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1 -G. Lesnevich/Direct -
 2 A Yes.
 3 Q All right. And then in the Defendant's
 4 Exhibit N, would you look at the page with Sunbow
 5 Production 893 which is also Page 11, and turning
 6 your attention to the signature on the line with
 7 the typed name Anne Bryant.
 8 A Yes.
 9 Q Have you examined that signature?
 10 A Yes I have.
 11 Q And my same question, when you made
 12 that original examination did you do it from an
 13 original copy that I provided to you?
 14 A The original document.
 15 Q Thank you. And then in that same
 16 Exhibit N would you turn to the page with Sunbow
 17 895, Page 13.
 18 A Yes.
 19 Q And again, did you examine the original
 20 document with respect to the signature of Anne
 21 Bryant?
 22 A Yes I did.
 23 Q Mr. Lesnevich, did Mr. Monaghan send to
 24 you directly for examination original documents
 25 bearing the plaintiff's signature?

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1 -G. Lesnevich/Direct -
 2 A Anne Bryant, yes.
 3 Q Yes. And did you examine those
 4 documents as well?
 5 A Yes I did.
 6 Q And did you return those originals to
 7 Mr. Monaghan after as he requested?
 8 A Yes I did.
 9 MS. PHARES: Your Honor, I am offering
 10 for identification, first of all, documents
 11 as R, a form 5500EZ with production numbers
 12 621 and 622, and I'm also offering for
 13 identification as Defendant's Exhibit S an
 14 agreement dated November 8, 1989 between Anne
 15 Bryant, Ford Kinder and Ford Kinder with
 16 production numbers 606 to 609, and also
 17 identifying as Defendant's Exhibit T three
 18 pages of cancelled checks from Square Music
 19 Business Productions, Limited, bearing
 20 production numbers 597, 600, 601, 603 and
 21 604.
 22 THE COURT: Is there any objection to
 23 those going into evidence?
 24 MR. MONAGHAN: None.
 25 THE COURT: Okay. They can be marked

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1 -G. Lesnevich/Direct -
 2 directly in then.
 3 (Documents further described herein were
 4 marked as Defendant's Exhibits R, S and T in
 5 evidence, as of this date.)
 6 Q Mr. Lesnevich, have you compared these,
 7 the signatures on these exhibits, that is
 8 Defendant's R, S and T with the questioned
 9 signature that you identified earlier?
 10 A Yes I did.
 11 Q From your examination and the
 12 comparison of the questioned signatures on the
 13 Sunbow agreements with the known signatures on
 14 plaintiff's documents, have you formed an opinion
 15 as to whether they were executed by the same
 16 person?
 17 A Yes I have.
 18 Q And what is that opinion?
 19 A That the three questioned signatures
 20 and the known signatures were all the product of
 21 the same person.
 22 Q And --
 23 MR. MONAGHAN: Can we have which
 24 signatures are questioned because we don't --
 25 the "Jem" signatures are not questioned.

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1 -G. Lesnevich/Direct -
 2 A The signature, there's one signature on
 3 Defendant's Exhibit M.
 4 MR. MONAGHAN: M is not --
 5 MS. PHARES: Your Honor, actually the
 6 letter we received from Mr. Monaghan was a
 7 bit equivocal about she thought there was a
 8 possibility it was genuine and we asked Mr.
 9 Lesnevich to examine it.
 10 THE COURT: All right.
 11 MS. BRYANT: We agreed to "Jem".
 12 THE COURT: Let's continue questioning.
 13 Go ahead.
 14 Q In the course of making your
 15 determination, do you have any kind of diagrams
 16 that demonstrate how you reached your conclusion?
 17 A Yes. After the examinations were
 18 completed I prepared a graphic illustration called
 19 a comparison chart that points out some of the
 20 unique similarities in the abbreviated signatures,
 21 the three that were given to me as questioned as
 22 well as a group of nine known signatures.
 23 MS. PHARES: I offer for identification
 24 Defendant's Exhibit U, which is a document
 25 entitled comparison chart Anne Bryant.

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1 -G. Lesnevich/Direct -
 2 (An item further described herein was marked
 3 as Defendant's Exhibit U for identification,
 4 as of this date.)
 5 Q Mr. Lesnevich, is the copy of the chart
 6 that you are currently looking at the same as the
 7 one that was marked for identification?
 8 A Yes, all the charts are the same.
 9 Q Thank you. Now, if you would, and the
 10 person who really needs to understand this is
 11 Justice O'Rourke. If you would explain how, or I'll
 12 give you a moment so you can line this up.
 13 Let me just make one thing clear just
 14 for the record. When, if you look at the first long
 15 printed page, across the top it has Q1A. Is that
 16 Q1A the agreement on the Defendant's Exhibit M, the
 17 "Jem" agreement from page, the pages Sunbow 88EZ?
 18 A It was Page 11.
 19 Q That's right. Page 11 of the agreement?
 20 A Right.
 21 Q Yes. And the questioned Document 1B, is
 22 that from Page 11 of the "My Little Pony and
 23 Friends".
 24 A That's correct.
 25 Q And "My Little and Pony Friends" which

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1 -G. Lesnevich/Direct -
 2 is Defendant's Exhibit N, and is the questioned
 3 Document 1C also from Defendant's Exhibit M, "My
 4 Little Pony and Friends" Page 13?
 5 A That's correct. At the top of the
 6 chart again there are enlargements of the three
 7 signatures in question. Below that are nine samples
 8 of the known signatures that we're working with.
 9 It's obvious from looking at the signatures that
 10 there's no way you would know that spells out the
 11 word Anne Bryant. It's a unique signature or
 12 marking of an individual.
 13 THE COURT: Would have been a great
 14 doctor I assume.
 15 THE WITNESS: Yes, your Honor.
 16 THE COURT: Go ahead.
 17 A One of the things I looked at in
 18 examining the documents first was looking at the
 19 known signatures down below to determine that
 20 there's a great deal of variation in this
 21 individual's signing of the name. There are times
 22 when a person makes the first A, the ending stroke
 23 more circular, in the lower right-hand corner shows
 24 an unusual formation, on the check shows an unusual
 25 formation of the A. So there's a variation.

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1 -G. Lesnevich/Direct -
 2 The other is when examining the three
 3 questioned signatures at the top, what I first
 4 looked at to see was A, is it unique. The second
 5 is, is it someone's spontaneous and natural
 6 writing. That can be seen in the upper left-hand
 7 corner on Q1A where the writer goes from the middle
 8 letter to the last letter you can see the pen comes
 9 up very little before it gets heavy in the final
 10 movements, and in the center signature in question,
 11 which is N11 you'll see the movement coming off the
 12 middle initial or letter, and again the pen drags
 13 up and continues up and continues on with the last
 14 letter.
 15 Q Just one thing. When you said, "N11"
 16 you're referring to Defendant's Exhibit N?
 17 A That's correct. On the upper right the
 18 third questioned signature you can again see the
 19 actual connection between the second and third
 20 writing movement or letters, and that shows natural
 21 and speed and quickness. There was no hesitation in
 22 the writings, no indication of someone trying to
 23 draw. It certainly is not a tracing. On Page Number
 24 2 I placed some arrows just to point out some of
 25 the similarities in the writing movements. At the

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1 -G. Lesnevich/Direct -
 2 top in the questioned signature Q1A, Arrow 1 points
 3 to a little eyelet in the back of the movement in
 4 the first letter A. That can also be seen in the
 5 extreme right-hand side at the top, that little
 6 eyelet movement.
 7 Q You're referring to questioned
 8 document 1C?
 9 A Correct. If you look down below into
 10 the known writing, if you look at the check in the
 11 center of the chart, Check Number 822, you can see
 12 an example of that little eyelet that's being put
 13 in there. Also if you look at Arrow 2 in Q1B of the
 14 questioned signature it shows the writer starts to
 15 make a formation like a triangle and if you look
 16 down below to the top line of the known on the
 17 right-hand side which says K schedule P, 1987, you
 18 have that same writing movement as illustrated by
 19 Arrow 2. Arrow 3 in all three of the questioned
 20 signatures shows the writer's movement coming
 21 across to the right and then ending that writing
 22 movement. So if you look down below you have that
 23 same type of writing movement coming across ending
 24 the first letter. In the middle letter in the
 25 questioned signature at the top, Arrow 4 shows an

<p style="text-align: right;">Page 70</p> <p>1 -G. Lesnevich/Direct - 2 angular movement, a wrist movement of writing 3 that's the same in all three of the questioned 4 signatures, and if you look down below to Arrow 4 5 and a number of the known signatures you can see 6 that same curvature being used which shows a wrist 7 movement that's again similar to what you see in 8 the questioned signatures. If you turn to Page 9 Three in the comparison chart, Arrow 5 in the 10 questioned signatures shows the pen going or light 11 pen movement between the second and third letters 12 being written and if you look down below the Arrow 13 5, especially down in the lower right-hand corner 14 you can see the little tick at the top. If you look 15 at the check in the center again, Check 822 you can 16 see that light movement where the pen drags on the 17 paper, and again it's a similar writing movement. 18 If you look at the ending stroke of the three 19 questioned signatures starting on the left, Arrow 7 20 shows a large movement, large upward movement on 21 the left side of the staff and if you look down 22 below to the lower left you can see that same large 23 opening or if you look to the top line of the known 24 signatures in the center that same opening you see. 25 Q And you're referring to the K</p>	<p style="text-align: right;">Page 72</p> <p>1 -G. Lesnevich/Cross - 2 rapidly, and there's no evidence of any hesitation 3 or tracing. 4 MS. PHARES: Thank you. Your Honor, I 5 offer Defendant's Exhibit U in evidence. 6 MR. MONAGHAN: No objection. 7 (An item previously marked as 8 Defendant's Exhibit U for identification was 9 received in evidence, as of this date.) 10 MS. PHARES: Your witness. 11 CROSS EXAMINATION BY MR. MONAGHAN: 12 Q Mr. Lesnevich, we've never met but we 13 have spoken before; have we not? 14 A We may have, yes. 15 Q On a different case, the Cohen case, 16 Meryll Lynch? 17 A I'm sure we have. 18 Q Okay. When you give an opinion, that 19 opinion is your best opinion based on the available 20 evidence you have, correct? 21 A Well, I would not render a definitive 22 conclusion such as this case if I didn't feel I had 23 enough known writings. 24 Q I understand it. 25 A But which, it is based on my</p>
<p style="text-align: right;">Page 71</p> <p>1 -G. Lesnevich/Direct - 2 agreement, 1989; is that correct? 3 A Correct. If you look to the upper right 4 in Q1C, Arrow 8 it shows a smaller opening at the 5 end and if you look just below that you'll see by 6 Arrow 8 again a similar opening and similar 7 spacing. 8 Q Now, referring to K schedule P, 1987? 9 A Correct. And finally if you look at the 10 questioned signature in the center, Q1B, Arrow 9 it 11 shows a little bit more of a triangle effect at the 12 ending stroke and if you look in to the lower 13 right-hand corner, Check Number 840 you can see an 14 example of the writer using a triangle, and what 15 you have is that the three questioned signatures 16 were naturally and spontaneously written. Each one 17 has a normal variation to it but the same 18 variations can be found within the known 19 signatures. If you're dealing with simulations or 20 forgeries you would expect all three of the 21 questioned signatures to look almost the same. If a 22 person were using one model to work with or if a 23 person practiced all three it would be almost the 24 same. You would not have this natural variation you 25 see. Plus the signatures are written quickly and</p>	<p style="text-align: right;">Page 73</p> <p>1 -G. Lesnevich/Cross - 2 examination of the evidence I'm given. 3 Q But it is possible there could be a 4 forgery that was so professional that it could even 5 pass your professional expertise; isn't that right? 6 A Oh, I think it's possible the sun is 7 not going to rise tomorrow must I'm sure it will. I 8 have never seen such a thing so I wouldn't know it. 9 Q You do admit it's a possibility? 10 A Anything is a possibility in life. 11 Q And to -- let me talk to you about the 12 exhibit that just went in. Where did it go? Did 13 you see any dissimilarities in the -- by the way, 14 we're not talking about the signatures now Q1A, 15 that's not at issue in the case. 16 A All right. 17 Q But if I can direct your attention to 18 Q1B where you had gone through very carefully the 19 similarities that you saw and point-by-point, by 20 your numbered points, did you see any 21 dissimilarities in any of the letters in Q1B when 22 you compared them to the genuine signatures? 23 A No. You see a variation in writing but 24 that variation was found within the known's. For 25 instance, if a person were to sign their name three</p>

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1 -G. Lesnevich/Cross -
 2 times in a row at one setting, just one, two,
 3 three, you'll find a normal and natural variation
 4 between each one.
 5 Q Okay. Well, and I'm not going to go
 6 much further with this, but by my layman's eye,
 7 would I be fairly close to the mark by suggesting
 8 that the A in Q1B is the only A that seems to go
 9 from left to right, each of the other left sides of
 10 the letter A is basically going in a straight line,
 11 but certainly not slightly to the left?
 12 A Are you referring to an overhand
 13 movement on the initial stroke coming up?
 14 Q It's easier for me to show you. Okay.
 15 Q1B--
 16 MS. PHARES: If you could try and say
 17 out loud what it is you're doing for the
 18 record and for us.
 19 A I'll mark it and hold it up if that
 20 works.
 21 Q Okay. We all have a copy of it. So,
 22 you're aware, of course, that Ms. Bryant has said
 23 this is not her signature, that is Q1B, questioned
 24 signature 1B?
 25 A I assumed that's an issue.

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1 -G. Lesnevich/Cross -
 2 Q Okay. Would I be correct in saying that
 3 all the exemplars, all the A's in the exemplars,
 4 and you have six of them on this page --
 5 A Nine actually.
 6 Q Okay. Fine. Right. Right -- the A's,
 7 all, all of those A's start on the left side in
 8 either a straight line or going slightly towards
 9 12 o'clock?
 10 A Are you referring to this moving like
 11 this? (Indicating)
 12 Q Exactly what I'm referring to. Isn't
 13 that at least one distinguishing characteristic of
 14 the letter A in these signatures?
 15 A No, because if you look at the center
 16 top known signature you have a more exaggeration of
 17 it and if you look into the lower left on Check 756
 18 you almost have the exact movement as you have in
 19 the questioned.
 20 Q You're telling the Court that, 756
 21 there's sort of a line blurring it?
 22 A But it's there.
 23 Q Maybe we can look at the check.
 24 MR. MONAGHAN: We have the checks?
 25 MS. PHARES: You have the checks.

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1 -G. Lesnevich/Cross -
 2 MR. MONAGHAN: I know. I'm going to pull
 3 it out.
 4 THE COURT: Well, I'm going to have to
 5 break. I have a meeting.
 6 MR. MONAGHAN: We only have a minute and
 7 we'll be done.
 8 Q Just so we're clear. You're saying that
 9 Check 756, the A in Check 756 is the same as far as
 10 you can tell with normal variations as the A in
 11 Q1B?
 12 A Yes, also taking into consideration the
 13 center on line one of the knowns which is the K
 14 agreement 1989 which shows even more of the
 15 exaggeration of an overhand movement.
 16 Q Yes, but it doesn't go to the left the
 17 way the one in Q1B does, does it?
 18 A I don't see much of a difference. They
 19 both start a little lower on the left and you can
 20 see that for instance on Check 756 and the writing
 21 movement appears to me to be very similar to the
 22 Check 756 to Q1B.
 23 Q Well, here's 756 the actual check.
 24 (Check handed to witness.)
 25 Q You're telling the Court that A is the

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1 -G. Lesnevich/Redirect -
 2 same as the A in Q1B?
 3 A What I'm saying is the writing
 4 movement, the initial stroke of the A as it comes
 5 up has that same ark to as you see in --
 6 Q Ark, that's the word I want. You're
 7 saying that Q1B has an ark in it, does it not, in
 8 the A?
 9 A Yes. The writing movement has a little
 10 bit of an ark.
 11 Q And you're telling the Court that the
 12 same ark is present on Check 756?
 13 A Yes.
 14 Q Okay.
 15 MR. MONAGHAN: I don't have any further
 16 questions.
 17 THE COURT: Any redirect?
 18 MS. PHARES: I just have one.
 19 REDIRECT EXAMINATION BY MS. PHARES:
 20 Q Mr. Lesnevich, has anything been
 21 brought out on cross examination that would alter
 22 in any way your original conclusion?
 23 A No.
 24 MS. PHARES: Thank you.
 25 Your Honor, I have just three documents

<p style="text-align: right;">Page 78</p> <p>1 -G. Lesnevich/Redirect -</p> <p>2 to offer in evidence, they are all affidavits</p> <p>3 and then that's it.</p> <p>4 THE COURT: All right.</p> <p>5 MS. PHARES: They are, I am offering as</p> <p>6 Defendant's Exhibit--</p> <p>7 (Witness Excused.)</p> <p>8 MS. PHARES: Your Honor, I'm offering in</p> <p>9 evidence the affidavit of Ford Kinder which</p> <p>10 is dated September 23, 2004.</p> <p>11 THE COURT: Any objection to that?</p> <p>12 MR. MONAGHAN: No, your Honor.</p> <p>13 MS. PHARES: And I am offering in</p> <p>14 evidence the letter of Mr. Monaghan to the</p> <p>15 Court dated September 20th. This is the</p> <p>16 letter in which he says that Ms. Bryant still</p> <p>17 has some questions about the signature on the</p> <p>18 "Jem" agreement and does not recall the</p> <p>19 agreement but she doesn't rule out the</p> <p>20 possibility that it is in fact her signature.</p> <p>21 MR. MONAGHAN: We don't need a lawyer's</p> <p>22 letter in evidence. I'll put her on the</p> <p>23 stand and she can say the same thing.</p> <p>24 MS. PHARES: We can do it much more</p> <p>25 quickly. This is an admission.</p>	<p style="text-align: right;">Page 80</p> <p>1 -G. Lesnevich/Redirect -</p> <p>2 Her signature has been identified a couple of</p> <p>3 times.</p> <p>4 THE COURT: All right.</p> <p>5 MR. MONAGHAN: Thanks, Judge.</p> <p>6 THE COURT: Now, let me just wind this</p> <p>7 up. I am reserving decision today. I am going</p> <p>8 to give each side a chance to submit a,</p> <p>9 hopefully short analysis of what we've done</p> <p>10 today, looking towards two things. One, you</p> <p>11 will, first of all, has the defendant proved</p> <p>12 to the satisfaction of, should that evidence</p> <p>13 prove to the satisfaction of the Court that</p> <p>14 the signatures involved here, questioned here</p> <p>15 actually belong to Ms. Bryant; the next</p> <p>16 question is, what is the purported -- if</p> <p>17 those signatures are Ms. Bryant's, and third,</p> <p>18 what is the stand of each party at this point</p> <p>19 about what remains, if anything, in this</p> <p>20 trial, and if you can get that to me within</p> <p>21 30 days.</p> <p>22 All right. Thank you very much. Very</p> <p>23 instructive.</p> <p>24 (Whereupon the proceedings were concluded.)</p> <p>25</p>
<p style="text-align: right;">Page 79</p> <p>1 -G. Lesnevich/Redirect -</p> <p>2 MR. MONAGHAN: Why don't we just do</p> <p>3 this. We'll stipulate on what we said in</p> <p>4 exhibit, in my letter of September 20th. We</p> <p>5 don't need it in evidence.</p> <p>6 MS. PHARES: Well, then do you want me</p> <p>7 to read it into the record?</p> <p>8 THE COURT: Just put it in evidence.</p> <p>9 MS. PHARES: And we are offering also</p> <p>10 the affidavit of Carole Weitzman identifying</p> <p>11 her signature on the "Jem" and "My Little</p> <p>12 Pony" agreements.</p> <p>13 MR. MONAGHAN: Absolutely not. She was</p> <p>14 mentioned in your Honor's order. I don't</p> <p>15 know why she's not here. Can't cross examine</p> <p>16 her, she's testified at a deposition.</p> <p>17 Affidavits don't usually get in evidence.</p> <p>18 THE COURT: Sustained.</p> <p>19 MS. PHARES: Your Honor, Mr. -- so far</p> <p>20 as I know Mr. Monaghan has the same subpoena</p> <p>21 power I do.</p> <p>22 THE COURT: All right.</p> <p>23 MS. PHARES: I do not control this</p> <p>24 witness. She is a third party, but we have</p> <p>25 evidence already in the record as to her.</p>	<p style="text-align: right;">Page 81</p> <p>1 -G. Lesnevich/Redirect -</p> <p>2</p> <p>3</p> <p>4 C-E-R-T-I-F-I-C-A-T-I-O-N</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Certified to be a true and accurate</p> <p>9 record of the within proceedings as taken and</p> <p>10 transcribed by me.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 Robin E. DiMichele, RPR</p> <p>18 Senior Court Reporter</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>